Federal Financial Institutions Examination Council § 1102.310

ASC may require the payment of fees, in accordance with the fee schedule referred to in §1102.306(e) prior to the release of any records requested pursuant to any subpoena or other legal process.

(b) Notification by person served. If any current or former member, officer, employee or agent of the ASC, or any other person who has custody of records belonging to the ASC, is served with a subpoena, court order, or other process requiring that person's attendance as a witness concerning any matter related to official duties, or the production of any exempt record of the ASC, such person shall promptly advise the Executive Director of such service, the testimony and records described in the subpoena, and all relevant facts that may assist the Executive Director, in consultation with the ASC General Counsel, in determining whether the individual in question should be authorized to testify or the records should be produced. Such person also should inform the court or tribunal that issued the process and the attorney for the party upon whose application the process was issued, if known, of the substance of this section.

(c) Appearance by person served. Absent the written authorization of the Executive Director or designee to disclose the requested information, any current or former member, officer, employee, or agent of the ASC, and any other person having custody of records of the ASC, who is required to respond to a subpoena or other legal process, shall attend at the time and place therein specified and respectfully decline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

[64 FR 72501, Dec. 28, 1999]

PARTS 1103–1199 [RESERVED]
CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER A—ORGANIZATION AND OPERATIONS

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PART 1200—ORGANIZATION AND FUNCTIONS

§ 1200.1 Federal Housing Finance Agency.

(a) Scope and authority. The Federal Housing Finance Agency (FHFA) is an independent agency of the Federal Government. Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654, titled the Federal Housing Finance Regulatory Reform Act of 2008, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) (Safety and Soundness Act) and the Federal Home Loan Bank Act (12 U.S.C. 1421–1449) to establish FHFA. FHFA administers the Safety and Soundness Act and the regulated entities’ authorizing statutes: the Federal Home Loan Bank Act, the Federal National Mortgage Association Charter Act, and the Federal Home Loan Mortgage Corporation Act. FHFA is responsible for the supervision and regulation of the Federal National Mortgage Corporation (Freddie Mac), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Home Loan Banks (Banks) (collectively, the “regulated entities”), and the Office of Finance (OF). FHFA is charged with ensuring that the regulated entities: Operate in a safe and sound manner, including maintaining adequate capital and internal controls; foster liquid, efficient, competitive, and resilient national housing finance markets; comply with the Safety and Soundness Act, its authorizing statute, and rules, regulations, guidelines, and orders issued under those statutes; carries out its mission only through activities that are authorized by statute; and acts and operates consistent with the public interest. The Director may delegate to FHFA officers and employees any of the functions, powers, and duties of the Director as the Director considers appropriate. The Director manages FHFA, including through authorities delegated to FHFA officers and employees.

(b) Location. FHFA’s headquarters is located at 400 Seventh Street SW., Washington, DC 20219. FHFA’s official hours of business are 8:00 a.m.–5 p.m. (Eastern Time), Monday through Friday, excluding Federal holidays.

§ 1200.2 Organization of the Federal Housing Finance Agency.

(a) Director. The Director is responsible for overseeing the prudential operations of each regulated entity, and for ensuring that each regulated entity: Operates in a safe and sound manner; operates and acts to foster liquid, efficient, competitive, and resilient national housing finance markets; complies with the Safety and Soundness Act, its authorizing statute, and rules, regulations, guidelines, and orders issued under those statutes; carries out its mission only through activities that are authorized by statute; and acts and operates consistent with the public interest. The Director may delegate to FHFA officers and employees any of the functions, powers, and duties of the Director as the Director considers appropriate. The Director manages FHFA, including through authorities delegated to FHFA officers and employees.

(b) Deputy Director of the Division of Enterprise Regulation. The Deputy Director is responsible for managing FHFA’s program of prudential supervision of the Enterprises. The Deputy Director is responsible for overseeing the prudential operations of each regulated entity, and for ensuring that each regulated entity: Operates in a safe and sound manner; operates and acts to foster liquid, efficient, competitive, and resilient national housing finance markets; complies with the Safety and Soundness Act, its authorizing statute, and rules, regulations, guidelines, and orders issued under those statutes; carries out its mission only through activities that are authorized by statute; and acts and operates consistent with the public interest. The Director may delegate to FHFA officers and employees any of the functions, powers, and duties of the Director as the Director considers appropriate. The Director manages FHFA, including through authorities delegated to FHFA officers and employees.
Director provides management oversight, direction, and support for all examination activity involving the Enterprises, the development of supervision findings, and preparation of the annual reports of examination. The Deputy Director provides support and advice to the Director and other senior executives and represents the division on significant and emerging supervisory issues and development of FHFA supervisory policy, and has such other responsibilities as the Director may prescribe.

(c) Deputy Director of the Division of Housing Mission and Goals. The Deputy Director is responsible for FHFA policy development and analysis, oversight of housing and regulatory policy, and oversight of the mission and goals of the Enterprises. The Deputy Director oversees and coordinates FHFA activities regarding data analysis, market surveillance, policy development, policy research and analysis affecting housing finance and financial markets, and policy analysis and research in support of FHFA’s mission and the Director’s responsibilities as a member of the Federal Housing Finance Oversight board, the Financial Stability Oversight Board, and the Financial Stability Oversight Council, and has such other responsibilities as the Director may prescribe.

(d) Deputy Director of the Division of Federal Home Loan Bank Regulation. The Deputy Director is responsible for managing FHFA’s program of prudential supervision of the Banks and the OF. The Deputy Director provides management oversight, direction and support for all examination activity involving the Banks, the development of supervision findings, and preparation of the annual reports of examination. The Deputy Director provides support and advice to the Director and other senior executives and represents the division on significant and emerging supervisory issues and development of FHFA supervisory policy, and has such other responsibilities as the Director may prescribe.

(e) Offices and functions—(1) Office of the Director. The Office of the Director supports the activities of the Director and includes Offices as the Director may create within the Office of the Director.

(2) Division of Enterprise Regulation. The division supports and implements the responsibilities of the Deputy Director described in paragraph (b) of this section. The division oversees and directs all enterpise supervisory activities, develops examination findings, prepares reports of examination, and prepares the sections of the Annual Report to Congress that describe the condition and performance of each Enterprise. The division monitors and assesses the financial condition and performance of the Enterprises. By means of annual examinations and a continuous on-site presence, the division monitors and assesses the amount of risk each Enterprise assumes, the quality of risk management, and compliance with regulations.

(3) Division of Housing Mission and Goals. The division supports and implements the responsibilities of the Deputy Director described in paragraph (c) of this section. In support of FHFA’s mission and the Director’s responsibilities as a member of the Federal Housing Finance Oversight Board, the Financial Stability Oversight Board, and the Financial Stability Oversight Committee, the division also oversees and coordinates FHFA activities that involve certain data analysis, and analysis affecting housing finance and financial markets.

(4) Division of Federal Home Loan Bank Regulation. The division supports and implements the responsibilities of the Deputy Director described in paragraph (d) of this section, including overseeing and directing all Bank supervisory activities, developing examination findings, preparing reports of examination, and preparing the sections of the annual report to Congress that describe the condition and performance of the Banks. The division monitors and assesses the financial condition and performance of the Banks and the OF and monitors and assesses their compliance with regulations, the amount of risk they assume, and the quality of their risk management through annual on-site examinations, periodic visits, and ongoing off-site monitoring and analysis.

(6) Office of General Counsel. The office advises and supports the Director and FHFA staff on legal matters related to the functions, activities, and operations of FHFA and the regulated entities; it supports supervision functions, development and promulgation of regulations and orders, and enforcement actions. The office manages the Freedom of Information, Privacy Act and ethics programs. The Designated Agency Ethics Official advises, counsels, and trains FHFA employees on ethical standards and conflicts of interest, and manages the agency’s financial disclosure program.

(7) Office of the Ombudsman. The office is responsible for considering complaints and appeals from the regulated entities, the OF and any person that has a business relationship with a regulated entity or the OF concerning any matter relating to FHFA’s regulation and supervision of that entity or the OF.

(8) Office of Minority and Women Inclusion. The office is responsible for all matters of FHFA relating to diversity in management, employment, and business activities, and for supervising the diversity requirements applicable to the regulated entities and the OF.

(f) Other Offices and Departments. The Director may from time to time establish or terminate Offices and Divisions of the agency as the Director deems necessary or appropriate to carry out FHFA’s mission. The Director may establish Offices and positions as the Director deems necessary and appropriate to support the operations of a federal agency, such as a Deputy Director for one or more specified areas of responsibility, a Chief Operating Officer, a Chief Financial Officer, an Office of Information Technology, and such other offices, departments, and positions as are necessary and appropriate or may be required by statute.

(g) Additional information. Current information on the organization of FHFA may be obtained by mail from the Office of Congressional Affairs and Communications, 400 Seventh Street, SW., Washington, DC 20219. Such information, as well as other FHFA information, also may be obtained electronically by accessing FHFA’s Web site located at www FHFA gov.

§ 1200.3 Official logo and seal.

This section describes and displays the logo adopted by the Director as the official symbol representing FHFA. It is displayed on correspondence, selected documents, and signage. The logo serves as the official seal to certify and authenticate official documents of the agency.

(a) Description. The logo is a disc consisting of three polygons each drawn in a manner resembling a silhouette of a pitched roof house and with distinctive eaves under its roof. Each polygon is placed one in front of the other, two of which are diminished in size from the polygon behind it. Placed in the center of the smallest polygon is the acronym for the organization, “FHFA.” The polygons are encircled by a designation scroll having a solid background and containing the words “FEDERAL HOUSING FINANCE AGENCY” in capital letters with serifs, with two mullets on the extreme left and right of the scroll. Upon approval by the Director, FHFA may employ variations of the color or shading of its logo and seal for specified purposes; these will be available for reference on the agency Web site at www fhfa gov.

(b) Display. FHFA’s official logo and seal appears below:
§ 1200.4 OMB control numbers as assigned under the Paperwork Reduction Act.

(a) Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3531) and the implementing regulations of the Office of Management and Budget (OMB) (5 CFR part 1320), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) OMB has approved the collections of information contained in FHFA’s regulations and has assigned each collection a control number. The following table displays the sections of FHFA’s regulations (both those located in this chapter and those promulgated by the former Federal Housing Finance Board that appear in chapter IX of this title) containing collections of information, along with the applicable OMB control numbers and the expiration dates for those control numbers:

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PART 1201—GENERAL DEFINITIONS APPLYING TO ALL FEDERAL HOUSING FINANCE AGENCY REGULATIONS

AUTHORITY: 12 U.S.C. 4511(b), 4513(a), 4513(b).

SOURCE: 78 FR 2322, Jan. 11, 2013, unless otherwise noted.
§ 1201.1 Definitions.

As used throughout this chapter, the following basic terms relating to the Federal Housing Finance Agency, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, the Office of Finance, and related entities have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section, or paragraph:


Acquired member assets or AMA means those assets that may be acquired by a Bank under part 955 of this title, or any successor thereto.

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;
(2) Supported by a note or other written evidence of the borrower’s obligation; and
(3) Fully secured by collateral in accordance with the Bank Act and part 1266 of this chapter.

Affordable Housing Program or AHP means the Affordable Housing Program that each Bank is required to establish pursuant to section 10(j) of the Bank Act (12 U.S.C. 1430(j)) and part 1291 of this chapter.

Appropriate Federal banking agency has the meaning set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and, for federally-insured credit unions, means the NCUA.

Appropriate state regulator means any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a particular institution.


Bank System means the Federal Home Loan Bank System, consisting of all of the Banks and the Office of Finance.

Capital plan means the capital structure plan required for each Bank by section 6(b) of the Bank Act, as amended (12 U.S.C. 1426(b)).

CIP means the Community Investment Program, an advance program under CICA required to be offered pursuant to section 10(i) of the Bank Act (12 U.S.C. 1430(i)).

Community Investment Cash Advance or CICA means any advance made through a program offered by a Bank under section 10 of the Bank Act (12 U.S.C. 1430) and parts 1291 and 1292 of this chapter to provide funding for targeted community lending and affordable housing, including advances made under a Bank’s Rural Development Funding (RDF) program, offered under section 10(j)(10) of the Bank Act (12 U.S.C. 1430(j)(10)); a Bank’s Urban Development Funding (UDF) program, offered under section 10(j)(10) of the Bank Act (12 U.S.C. 1430(j)(10)); a Bank’s Affordable Housing Program (AHP), offered under section 10(j) of the Bank Act (12 U.S.C. 1430(j)); a Bank’s Community Investment Program (CIP), offered under section 10(i) of the Bank Act (12 U.S.C. 1430(i)); or any other program offered by a Bank that meets the requirements of part 1292 of this chapter.

Community lending means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions (as defined in §1263.1 of this chapter), purchasing or funding small business loans, small farm loans, small agricultural loans, or community development loans (as defined in §1266.1 of this chapter).

Consolidated obligation or CO means any bond, debenture, or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

Data Reporting Manual or DRM means a manual issued by FHFA and amended from time to time containing reporting
requirements for the Regulated Entities.

Director, written in title case, means the Director of FHFA or his or her designee.

Enterprise means Fannie Mae and Freddie Mac (collectively, Enterprises) and any affiliate thereof.

Excess stock means that amount of a Bank’s capital stock owned by a member or other institution in excess of that member’s or other institution’s minimum investment in capital stock required under the Bank’s capital plan, the Bank Act, or FHFA’s regulations, as applicable.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

FDIC means the Federal Deposit Insurance Corporation.

FHFA means the Federal Housing Finance Agency established by Section 1311(a) of the Safety and Soundness Act. (12 U.S.C. 4511(a)).

Financing Corporation or FICO means the Financing Corporation established and supervised by the Director under section 21 of the Bank Act (12 U.S.C. 1441) and part 1271 of this chapter.

FRB means the Board of Governors of the Federal Reserve System.

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Generally Accepted Accounting Principles or GAAP means accounting principles generally accepted in the United States.


GLB Act means the Gramm-Leach-Bliley Act (Pub. L. 106-102 (1999)).


Housing associate means an entity that has been approved as a housing associate pursuant to part 1264 of this chapter.

HUD means the United States Department of Housing and Urban Development.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§1263.20 or 1263.24(b) of this chapter.

NCUA means the National Credit Union Administration.

NRSRO means a credit rating organization registered with the SEC as a nationally recognized statistical rating organization by the Securities and Exchange Commission.

OCC means the Office of the Comptroller of the Currency.

Office of Finance or OF means the Office of Finance, a joint office of the Banks established under part 1273 of this chapter and referenced in the Bank Act and the Safety and Soundness Act.

President, when referring to an officer of a Bank only, means a Bank’s principal executive officer.


Resolution Funding Corporation or REFCORP means the Resolution Funding Corporation established by section 21B of the Bank Act (12 U.S.C. 1441b).


SEC means the United States Securities and Exchange Commission.

State means a state of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.


EFFECTIVE DATE NOTE: At 81 FR 91688, Dec. 19, 2016, §1201.1 was amended by revising the definition of “Acquired member assets”, effective Jan. 18, 2017. For the convenience of the user, the revised text is set forth as follows:

§ 1201.1 Definitions.

* * * * *
Acquired member assets or AMA means assets acquired in accordance with, and satisfying the applicable requirements of, part 1268 of this chapter.

PART 1202—FREEDOM OF INFORMATION ACT

Sec. 1202.1 Why did FHFA issue this regulation?
1202.2 What do the terms in this regulation mean?
1202.3 What information can I obtain through FOIA?
1202.4 What information is exempt from disclosure?
1202.5 How do I request information from FHFA or FHFA–OIG under FOIA?
1202.6 What if my request does not have all the information FHFA or FHFA–OIG requires?
1202.7 How will FHFA or FHFA–OIG respond to my FOIA request?
1202.8 If the requested records contain confidential commercial information, what procedures will FHFA or FHFA–OIG follow?
1202.9 How do I appeal a response denying my FOIA request?
1202.10 Will FHFA or FHFA–OIG expedite my request or appeal?
1202.11 What will it cost to get the records I requested?
1202.12 Is there anything else I need to know about FOIA procedures?


SOURCE: 76 FR 29634, May 23, 2011, unless otherwise noted.

§ 1202.2 What do the terms in this regulation mean?

Some of the terms you need to understand while reading this regulation are—

Appeals Officer or FOIA Appeals Officer means a person designated by the FHFA Director to process appeals of denials of requests for FHFA records under FOIA. For appeals pertaining to FHFA–OIG records, Appeals Officer or FOIA Appeals Officer means a person designated by the FHFA Inspector General to process appeals of denials of requests for FHFA–OIG records under FOIA.

Confidential commercial information means records provided to the Federal Government by a submitter that contain material exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

Days, unless stated as “calendar days,” are working days and do not include Saturdays, Sundays, and federal holidays. If the last day of any period prescribed herein falls on a Saturday, Sunday, or federal holiday, the last day of the period will be the next working day that is not a Saturday, Sunday, or federal holiday.
Direct costs means the expenses, including contract services, incurred by FHFA or FHFA–OIG, in searching for, reviewing and/or duplicating records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures FHFA or FHFA–OIG actually incurs in reviewing records to respond to the request. Direct costs include the cost of the time of the employee performing the work, the cost of any computer searches, and the cost of operating duplication equipment. Direct costs do not include overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

Employee, for the purposes of this regulation, means any person holding an appointment to a position of employment with FHFA or FHFA–OIG, or any person who formerly held such an appointment; any conservator appointed by FHFA; or any agent or independent contractor acting on behalf of FHFA or FHFA–OIG, even though the appointment or contract has terminated.

Fee Waiver means the waiver or reduction of fees if the requester can demonstrate that certain statutory standards are met.

FHFA means the Federal Housing Finance Agency and includes its predecessor agencies, the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB).

FHFA–OIG means the Office of Inspector General for FHFA.

FOIA Officer and Chief FOIA Officer are persons designated by the FHFA Director to process and respond to requests for FHFA records under FOIA.

FOIA Official is a person designated by the FHFA Inspector General to process requests for FHFA–OIG records under FOIA.

FOIA Public Liaison is a person who is responsible for assisting requesters with their requests.

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

Readily reproducible means that the requested record or records exist in electronic format and can be downloaded or transferred intact to a computer disk, tape, or another electronic medium with equipment and software currently in use by FHFA or FHFA–OIG.

Record means information or documentary material FHFA or FHFA–OIG maintains in any form or format, including electronic, which FHFA or FHFA–OIG—

1. Created or received under federal law or in connection with the transaction of public business;
2. Preserved or determined is appropriate for preservation as evidence of operations or activities of FHFA or FHFA–OIG, or because of the value of the information it contains; and
3. Controls at the time it receives a request for disclosure.


Requester means any person seeking access to FHFA or FHFA–OIG records under FOIA. A requester falls into one of three categories for the purpose of determining what fees may be charged. The three categories are—

1. Commercial;
2. News media, scientific institution or educational; and
3. Other.

Search time means the amount of time spent by or on behalf of FHFA or FHFA–OIG in attempting to locate records responsive to a request, whether manually or by electronic means, including but not limited to page-by-page or line-by-line identification of responsive material within a record or extraction of electronic information from electronic storage media.

Submitter means any person or entity providing confidential information to the Federal Government. The term “submitter” includes, but is not limited to corporations, state governments, and foreign governments.

Unusual circumstances means the need to—

1. Search for and/or collect records from agencies, offices, facilities, or locations that are separate from the office processing the request;
2. Search, review, and/or duplicate a voluminous amount of separate and
distinct records in order to process a single request; or
(3) Consult with another agency or among two or more components of FHFA or FHFA–OIG that have a substantial interest in the determination of a request.


§ 1202.3 What information can I obtain through FOIA?

(a) General. FHFA and FHFA–OIG prohibit employees from releasing or disclosing confidential or otherwise non-public information that FHFA or FHFA–OIG possesses, except as authorized by this regulation, by the Director of FHFA for FHFA records, or by the FHFA Inspector General for FHFA–OIG records, when the disclosure is necessary for the performance of official duties.

(b) Records. You may request that FHFA or FHFA–OIG disclose to you its records on a subject of interest to you. FOIA only requires the disclosure of records. It does not require FHFA or FHFA–OIG to create compilations of information or to provide narrative responses to questions or queries. Some information is exempt from disclosure.

(c) Reading rooms. (1) FHFA maintains electronic and physical reading rooms. FHFA’s physical reading room is located at 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219, and is open to the public by appointment from 9 a.m. to 3 p.m. each business day. For an appointment, contact the FOIA Officer by calling (202) 649–3803 or by e-mail at foia@fhfa.gov. The electronic reading room is part of the FHFA Web site at http://www.fhfa.gov. FHFA–OIG also maintains electronic and physical reading rooms. FHFA–OIG’s physical reading room is located at 400 Seventh Street, SW., Third Floor, Washington, DC 20219, and is open to the public by appointment from 9 a.m. to 3 p.m. each business day. For an appointment, contact FHFA–OIG by calling (202) 730–2824 or by e-mail at bryan.saddler@fhfaoig.gov. The electronic reading room is part of the FHFA–OIG Web site at http://www.fhfaoig.gov.

(2) Each reading room has the following records created after November 1, 1996, by FHFA or its predecessor agencies, or by FHFA–OIG, and current indices to the following records created by FHFA or its predecessor agencies or FHFA–OIG before or after November 1, 1996:

(i) Final opinions or orders issued in adjudication;
(ii) Statements of policy and interpretation that are not published in the Federal Register;
(iii) Administrative staff manuals and instructions to staff that affect a member of the public and are not exempt from disclosure under FOIA; and
(iv) Copies of records released under FOIA that FHFA or FHFA–OIG determines have become or are likely to become the subject of subsequent requests for substantially similar records.


§ 1202.4 What information is exempt from disclosure?

(a) General. Unless the Director of FHFA or his or her designee for FHFA records, the FHFA Inspector General or his or her designee for FHFA–OIG records, or any regulation or statute specifically authorizes disclosure, neither FHFA nor FHFA–OIG will release records that are—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and in fact is properly classified pursuant to such Executive Order;
(2) Related solely to FHFA’s or FHFA–OIG’s internal personnel rules and practices;
(3) Specified exempt from disclosure by statute (other than 5 U.S.C. 552a), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;
(5) Contained in inter-agency or infra-agency memoranda or letters
§ 1202.5 How do I request information from FHFA or FHFA-OIG under FOIA?

(a) Where to send your request. FOIA requests must be in writing. You may make a request for FHFA or FHFA-OIG records by writing directly to FHFA’s FOIA Office through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: foia@fhfa.gov. For mail or delivery service, the mailing address is: FOIA Officer, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219. The facsimile number is: (202) 649-1073. Requests for FHFA-OIG records will be forwarded to FHFA-OIG for processing and direct response. You can help
FHFA and FHFA–OIG process your request by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “FOIA Request.” FHFA’s “Freedom of Information Act Reference Guide,” which is available on FHFA’s Web site, http://www.fhfa.gov, provides additional information to assist you in making your request.

(b) Provide your name and address. Your request must include your full name, your address and, if different, the address at which FHFA or FHFA–OIG is to notify you about your request, a telephone number at which you can be reached during normal business hours, and an electronic mail address, if any.

(c) Request is under FOIA. Your request must have a statement identifying it as being made under FOIA.

(d) Your FOIA status. If you are submitting your request as a “commercial use” requester, an “educational institution” requester, a “non-commercial scientific institution” requester, or a “representative of the news media” for the purposes of the fee provisions of FOIA, your request should include a statement specifically identifying your status.

(e) Describing the records you request. You must describe the records that you seek in enough detail to enable FHFA or FHFA–OIG personnel to locate them with a reasonable amount of effort. Your request should include as much specific information as possible that you know about each record you request, such as the date, title, name, author, recipient, subject matter, or file designations, or the description of the record.

(f) How you want the records produced to you. Your request must tell FHFA or FHFA–OIG whether you will inspect the records before duplication or want them duplicated and furnished without inspection.

(g) Agreement to pay fees. In your FOIA request you must agree to pay all applicable fees charged under §1202.11, up to $100.00, unless you seek a fee waiver. When making a request, you may specify a higher or lower amount you will pay without consultation. Your inability to pay a fee does not justify granting a fee waiver.

(h) Valid requests. FHFA and FHFA–OIG will only process valid requests. A valid request must meet all the requirements of this part.


§ 1202.6 What if my request does not have all the information FHFA or FHFA–OIG requires?

If FHFA or FHFA–OIG determines that your request does not reasonably describe the records you seek, is overly broad, cannot yet be processed for reasons related to fees, or lacks required information, you will be informed in writing why your request cannot be processed. You will be given 15 calendar days to modify your request to meet all requirements. This request for additional information tolls the time period for FHFA or FHFA–OIG to respond to your request under §1202.7.

(a) If you respond with the necessary information, FHFA or FHFA–OIG will process that response as a new request and the time period for FHFA or FHFA–OIG to respond to your request will start from the date the additional information is actually received by FHFA or FHFA–OIG.

(b) If you do not respond or provide additional information within the time allowed, or if the additional information you provide is still incomplete or insufficient, FHFA and FHFA–OIG will consider your request withdrawn and will notify you that it will not be processed.

§ 1202.7 How will FHFA and FHFA–OIG respond to my FOIA request?

(a) Authority to grant or deny requests. The FOIA Officer and the Chief FOIA Officer are authorized to grant or deny any request for FHFA records. For FHFA–OIG records, the designated FHFA–OIG FOIA Official is authorized to grant or deny any request for FHFA–OIG records.

(b) Multi-Track request processing. FHFA and FHFA–OIG use a multi-track system to process FOIA requests. This means that a FOIA request is processed based on its complexity. When FHFA or FHFA–OIG receives your request, it is assigned to a Standard Track or Complex Track. FHFA or
FHFA-OIG will notify you if your request is assigned to the Complex Track as described in paragraph (f) of this section.

1. Standard Track. FHFA and FHFA-OIG assign FOIA requests that are routine and require little or no search time, review, or analysis to the Standard Track. FHFA and FHFA-OIG respond to these requests within 20 days after receipt, in the order in which they are received. If FHFA or FHFA-OIG determines while processing your Standard Track request, that it is more appropriately a Complex Track request, it will be reassigned to the Complex Track and you will be notified as described in paragraph (f) of this section.

2. Complex Track. (i) FHFA and FHFA-OIG assign requests that are non-routine to the Complex Track. Complex Track requests are those to which FHFA or FHFA-OIG determines that the request and/or response may—
(A) Be voluminous;
(B) Involve two or more FHFA or FHFA-OIG units;
(C) Require consultation with other agencies or entities;
(D) Require searches of archived documents;
(E) Seek confidential commercial information as described in §1202.8;
(F) Require an unusually high level of effort to search for, review and/or duplicate records;
(G) Cause undue disruption to the day-to-day activities of FHFA in regulating and supervising the regulated entities; or
(H) Cause undue disruption to the day-to-day activities of FHFA-OIG in carrying out its statutory responsibilities.

(ii) FHFA or FHFA-OIG will respond to Complex Track requests as soon as reasonably possible, regardless of the date of receipt.

(c) Referrals to other agencies. If you submit a FOIA request that seeks records originating in another Federal Government agency, FHFA or FHFA-OIG will refer your request or a portion of your request, as applicable, to the other agency for response. FHFA or FHFA-OIG will provide you notice of the referral, what portion of the request was referred, and the name of the other agency and contact information.

(d) Responses to FOIA requests. FHFA or FHFA-OIG will respond to your request by granting or denying it in full, or by granting and denying it in part. The response will be in writing. In determining which records are responsive to your request, FHFA and FHFA-OIG will conduct searches for records FHFA or FHFA-OIG possesses as of the date of your request.

(1) Requests that FHFA or FHFA-OIG grants. If FHFA or FHFA-OIG grants your request, the response will include the requested records or details about how FHFA or FHFA-OIG will provide them to you and the amount of any fees charged.

(2) Requests that FHFA or FHFA-OIG denies, or grants and denies in part. If FHFA or FHFA-OIG denies your request in whole or in part because a requested record does not exist or cannot be located, is not readily reproducible in the form or format you sought, is not subject to FOIA, or is exempt from disclosure, the written response will include the requested releasable records, if any, the amount of any fees charged, the reasons for denial, and a notice and description of your right to file an administrative appeal under §1202.9.

(e) Format and delivery of disclosed records. If FHFA or FHFA-OIG grants, in whole or in part, your request for disclosure of records under FOIA, the records may be made available to you in the form or format you requested, if they are readily reproducible in that form or format. The records will be sent to the address you provided by regular U.S. Mail or by electronic mail unless alternate arrangements are made by mutual agreement, such as your agreement to pay express or expedited delivery service fees or to pick up records at FHFA or FHFA-OIG offices.

(f) Extensions of time. (1) In unusual circumstances, FHFA or FHFA-OIG may extend the Standard Track time limit in paragraph (b)(1) of this section for no more than 10 days and notify you of—
(i) The reason for the extension; and
(ii) The date on which the determination is expected.
(2) For requests in the Complex Track, FHFA or FHFA–OIG will provide you with an opportunity to modify or reformulate your request so that it may be processed on the Standard Track. If the request cannot be modified or reformulated to permit processing on the Standard Track, FHFA or FHFA–OIG will notify you regarding an alternative time period for processing the request.


§ 1202.8 If the requested records contain confidential commercial information, what procedures will FHFA or FHFA–OIG follow?

(a) General. FHFA or FHFA–OIG will not disclose confidential commercial information in response to your FOIA request except as described in this section.

(b) Designation of confidential commercial information. Submitters of commercial information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of the information they deem to be protected under 5 U.S.C. 552(b)(4) and §1202.4(a)(4). Any such designation will expire 10 years after the records are submitted to the Federal Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) Pre-disclosure notification. Except as provided in paragraph (e) of this section, if your FOIA request encompasses confidential commercial information, FHFA or FHFA–OIG will, prior to disclosure of the information and to the extent permitted by law, provide prompt written notice to a submitter that confidential commercial information was requested when—

(1) The submitter has in good faith designated the information as confidential commercial information protected from disclosure under 5 U.S.C. 552(b)(4) and §1202.4(a)(4); or

(2) FHFA or FHFA–OIG has reason to believe that the request seeks confidential commercial information, the disclosure of which may result in substantial competitive harm to the submitter.

(d) Content of pre-disclosure notification. When FHFA or FHFA–OIG sends a pre-disclosure notification to a submitter, it will contain—

(1) A description of the confidential commercial information requested or copies of the records or portions thereof containing the confidential business information; and

(2) An opportunity to object to disclosure within 10 days or such other time period that FHFA or FHFA–OIG may allow, by providing to FHFA or FHFA–OIG a detailed written statement demonstrating all reasons the submitter opposes disclosure.

(e) Exceptions to pre-disclosure notification. FHFA or FHFA–OIG is not required to send a pre-disclosure notification if—

(1) FHFA or FHFA–OIG determines that information should not be disclosed;

(2) The information has been published lawfully or has been made officially available to the public;

(3) Disclosure of the information is required by law, other than FOIA;

(4) The information requested is not designated by the submitter as confidential commercial information pursuant to this section; or

(5) The submitter’s designation, under paragraph (b) of this section, appears on its face to be frivolous; except that FHFA or FHFA–OIG will provide the submitter with written notice of any final decision to disclose the designated confidential commercial information within a reasonable number of days prior to a specified disclosure date.

(f)Submitter’s objection to disclosure. A submitter may object to disclosure within 10 days after date of the Pre-disclosure Notification, or such other time period that FHFA or FHFA–OIG may allow, by delivering to FHFA or FHFA–OIG a statement demonstrating all grounds on which it opposes disclosure, and all reasons supporting its contention that the information should not be disclosed. The submitter’s objection must contain a certification by the submitter, or an officer or authorized representative of the submitter, that the grounds and reasons presented are true and correct to the best of the submitter’s knowledge and belief.
§ 1202.9 How do I appeal a response denying my FOIA request?

(a) Right of appeal. If FHFA or FHFA–OIG denied your request in whole or in part, you may appeal the denial by writing directly to the FOIA Appeals Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: foia@fhfa.gov. For mail or delivery service, the mailing address is: FOIA Appeals Officer, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219. The facsimile number is: (202) 649–1073. You can help FHFA and FHFA–OIG process your appeal by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “FOIA Appeal.” For appeals of denials, whether in whole or in part, made by FHFA–OIG, the appeal must be clearly marked by adding “FHFA–OIG” after “FOIA Appeal.” All appeals from denials, in whole or in part, made by FHFA–OIG will be forwarded to the FHFA–OIG FOIA Appeals Officer for processing and direct response. FHFA’s “Freedom of Information Act Reference Guide,” which is available on FHFA’s Web site, http://www.fhfa.gov, provides additional information to assist you in making your appeal.

(b) Timing, form, content, and receipt of an appeal. Your appeal must be written and submitted within 30 calendar days of the date of the decision by FHFA or FHFA–OIG denying, in whole or in part, your request. Your appeal must include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments you believe support disclosure of the requested record(s). FHFA and FHFA–OIG will not consider an improperly addressed appeal to have been received for the purposes of the 20-day time period of paragraph (d) of this section until it is actually received by FHFA.

(c) Extensions of time to appeal. If you need more time to file your appeal, you may request, in writing, an extension of time of no more than 10 calendar days in which to file your appeal, but only if your request is made within the original 30-calendar day time period for filing the appeal. Granting such an extension is in the sole discretion of the FHFA or FHFA–OIG FOIA Appeals Officer. (d) Final action on appeal. FHFA’s or FHFA–OIG’s determination on your appeal will be in writing, signed by the FHFA or FHFA–OIG FOIA Appeals Officer, and sent to you within 20 days after the appeal is received, or by the last day of the last extension under

submitter’s knowledge. The submitter’s objection may itself be subject to disclosure under FOIA.

(g) Notice of intent to disclose information. FHFA or FHFA–OIG will carefully consider all grounds and reasons provided by a submitter objecting to disclosure. If FHFA or FHFA–OIG decides to disclose the information over the submitter’s objection, the submitter will be provided with a written notice of intent to disclose at least 10 days before the date of disclosure. The written notice will contain—

(1) A statement of the reasons why the information will be disclosed;
(2) A description of the information to be disclosed; and
(3) A specific disclosure date.

(h) Notice to requester. FHFA or FHFA–OIG will give a requester whose request encompasses confidential commercial information—

(1) A written notice that the request encompasses confidential commercial information that may be exempt from disclosure under 5 U.S.C. 552(b)(4) and § 1202.4(a)(4) and that the submitter of the information has been given a pre-disclosure notification with the opportunity to comment on the proposed disclosure of the information; and
(2) A written notice that a notice of intent to disclose has been provided to the submitter, and that the submitter has 10 days, or such other time period that FHFA or FHFA–OIG may allow, to respond.

(i) Notice of FOIA lawsuit. FHFA or FHFA–OIG will promptly notify the submitter whenever a requester files suit seeking to compel disclosure of the submitter’s confidential commercial information. FHFA or FHFA–OIG will promptly notify the requester whenever a submitter files suit seeking to prevent disclosure of information.
§ 1202.11 What will it cost to get the records I requested?

(a) Assessment of fees, generally. FHFA or FHFA–OIG will assess you for fees covering the direct costs of responding

(b) Certification of compelling need. Your request for expedited processing must include a statement certifying that the reason(s) you present demonstrate a compelling need are true and correct to the best of your knowledge.

(c) Determination on request. FHFA or FHFA–OIG will notify you within 10 days of receipt of your request whether expedited processing has been granted. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal under §1202.9 of that decision will be acted on expeditiously.

§ 1202.10 Will FHFA or FHFA–OIG expedite my request or appeal?

(a) Request for expedited processing. You may request, in writing, expedited processing of an initial request or of an appeal. FHFA or FHFA–OIG may grant expedited processing, and give your request or appeal priority if your request for expedited processing demonstrates a compelling need by establishing one or more of the following—

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if you are a person primarily engaged in disseminating information;

(3) The loss of substantial due process or rights;

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the Federal Government’s integrity, affecting public confidence; or

(5) Humanitarian need.

(b) Certification of compelling need. Your request for expedited processing must include a statement certifying that the reason(s) you present demonstrate a compelling need are true and correct to the best of your knowledge.

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(5) Humanitarian need.

(b) Certification of compelling need. Your request for expedited processing must include a statement certifying that the reason(s) you present demonstrate a compelling need are true and correct to the best of your knowledge.

(c) Determination on request. FHFA or FHFA–OIG will notify you within 10 days of receipt of your request whether expedited processing has been granted. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal under §1202.9 of that decision will be acted on expeditiously.
§ 1202.11  12 CFR Ch. XII (1–1–17 Edition)

to your request and costs for duplicating records, except as otherwise provided in a statute with respect to the determination of fees that may be assessed for disclosure, search time, or review of particular records.

(b) Assessment of fees, categories of requesters. The fees that FHFA or FHFA-OIG may assess vary depending on the type of request or the type of requester you are—

(1) Commercial use. If you request records for a commercial use, the fees that FHFA or FHFA-OIG may assess are limited to FHFA’s or FHFA-OIG’s operating costs incurred for document search, review, and duplication.

(2) Educational institution, noncommercial scientific institution, or representative of the news media. If you are not requesting records for commercial use and you are an educational institution or a noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the fees that may be assessed are limited to standard reasonable charges for duplication in excess of 100 pages or an electronic equivalent of 100 pages.

(3) Other. If neither paragraph (b)(1) nor paragraph (b)(2) of this section applies, the fees assessed are limited to the costs for document searching in excess of two hours and duplication in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) Fee schedule. The current schedule of fees is maintained on FHFA’s Web site at: http://www.fhfa.gov.

(d) Notice of anticipated fees in excess of $100.00. When FHFA or FHFA-OIG determines or estimates that the fees chargeable to you will exceed $100.00, you will be notified of the actual or estimated amount of fees you will incur, unless you earlier indicated your willingness to pay fees as high as those anticipated. When you are notified that the actual or estimated fees exceed $100.00, your FOIA request will not be considered received by FHFA or FHFA-OIG until you agree to pay the anticipated total fee.

(e) Advance payment of fees. FHFA or FHFA-OIG may request that you pay estimated fees or a deposit in advance of responding to your request. If FHFA or FHFA-OIG requests advance payment or a deposit, your request will not be considered received by FHFA or FHFA-OIG until the advance payment or deposit is received. FHFA or FHFA-OIG will request advance payment or a deposit if—

(1) The fees are likely to exceed $500.00. FHFA or FHFA-OIG will notify you of the likely cost and obtain from you satisfactory assurance of full payment if you have a history of prompt payment of FOIA fees to FHFA or FHFA-OIG;

(2) You do not have a history of payment, or if the estimate of fees exceeds $1,000.00, FHFA or FHFA-OIG may require an advance payment of fees in an amount up to the full estimated charge that will be incurred;

(3) You previously failed to pay a fee to FHFA or FHFA-OIG in a timely fashion, i.e., within 30 calendar days of the date of a billing, FHFA or FHFA-OIG may require you to make advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request; or

(4) You have an outstanding balance due from a prior request. FHFA or FHFA-OIG may require you to pay the full amount owed plus any applicable interest, as provided in paragraph (f) of this section, or demonstrate that the fee owed has been paid, as well as payment of the full amount of anticipated fees before processing your request.

(f) Interest. FHFA or FHFA-OIG may charge you interest on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent. Once a fee payment has been received by FHFA or FHFA-OIG, even if not processed, FHFA or FHFA-OIG will stay the accrual of interest. Interest charges will be assessed at the rate prescribed by 31 U.S.C. 3717 and will accrue from the date of the billing.

(g) FHFA or FHFA-OIG assistance to reduce costs. If FHFA or FHFA-OIG notifies you of estimated fees exceeding $100.00 or requests advance payment or a deposit, you will have an opportunity to consult with FHFA or FHFA-OIG FOIA staff to modify or reformulate your request to meet your needs at a lower cost.

(h) Fee waiver requests. You may request a fee waiver in accordance with
FOIA and this regulation. FHFA or FHFA–OIG may grant your fee waiver request if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester. In submitting a fee waiver request, you must address the following six factors—

1. Whether the subject of the requested records concerns the operations or activities of the Federal Government;
2. Whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;
3. Whether disclosure of the requested information will contribute to public understanding;
4. Whether the disclosure is likely to contribute significantly to public understanding of Federal Government operations or activities;
5. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Determinations on request. FHFA or FHFA–OIG will notify you within 20 days of receipt of your request whether the fee waiver has been granted. A request for fee waiver that is denied may only be appealed when a final decision has been made on the initial FOIA request.

§ 1203.12 Is there anything else I need to know about FOIA procedures?

This FOIA regulation does not and shall not be construed to create any right or to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under FOIA. This regulation only provides procedures for requesting records under FOIA.
§ 1203.2 Definitions.

As used in this part:

Adjudicative officer means the official who presided at the underlying adversary adjudication, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise.

Adversary adjudication means an administrative proceeding conducted by FHFA under 5 U.S.C. 554 in which the position of FHFA or any other agency of the United States is represented by counsel or otherwise, including but not limited to an adjudication conducted under the Safety and Soundness Act, as amended, and any implementing regulations. Any issue as to whether an administrative proceeding is an adversary adjudication for purposes of this part will be an issue for resolution in the proceeding on the application for award.

Affiliate means an individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the party, or any corporation or other entity of which the party directly or indirectly owns or controls a majority of the voting shares or other interest, unless the adjudicative officer determines that it would be unjust and contrary to the purpose of the Equal Access to Justice Act in light of the actual relationship between the affiliated entities to consider them to be affiliates for purposes of this part.

Agency counsel means the attorney or attorneys designated by the General Counsel of FHFA to represent FHFA in an adversary adjudication covered by this part.

Demand of FHFA means the express demand of FHFA that led to the adversary adjudication, but does not include a recitation by FHFA of the maximum statutory penalty when accompanied by an express demand for a lesser amount.

Director means the Director of the Federal Housing Finance Agency.

Fees and other expenses means reasonable attorney fees, the reasonable expenses of expert witnesses, and the reasonable cost of any study, analysis, engineering report, or test, which the agency finds necessary for the preparation of the eligible party’s case.

FHFA means the Federal Housing Finance Agency.

Final disposition date means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

Party means an individual, partnership, corporation, association, or public or private organization that is named or admitted as a party, that is admitted as a party for limited purposes, or that is properly seeking and entitled as of right to be admitted as a party in an adversary adjudication.

Position of FHFA means the position taken by FHFA in the adversary adjudication, including the action or failure to act by FHFA upon which the adversary adjudication was based.

§ 1203.3 Eligible parties.

(a) To be eligible for an award of fees and other expenses under the Equal Access to Justice Act, the applicant must show that it meets all conditions of eligibility set out in this paragraph and has complied with all the requirements in subpart B of this part. The applicant must also be a party to the adversary adjudication for which it seeks an award.

(b) To be eligible for an award of fees and other expenses for prevailing parties, a party must be one of the following:

(1) An individual who has a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interest, and not more than 500 employees; however, a party who owns an unincorporated business will be considered to be an “individual” rather than the “sole owner of an unincorporated business” if the issues on which the party prevails are related primarily to personal interests rather than to business interests;
§ 1203.5 Allowable fees and expenses.

(a) Awards of fees and other expenses will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. However, except as provided in §1203.6, an award for the fee of an attorney or agent may not exceed $125 per hour and an award to compensate an expert witness may not exceed the highest rate at which FHFA pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer will consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the eligible party;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

§ 1203.4 Standards for awards.

(a) An eligible party that files an application for award of fees and other expenses in accordance with this part will receive an award of fees and other expenses incurred in connection with an adversary adjudication in which it prevailed or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the party has committed a willful violation of law or otherwise acted in bad faith, or unless special circumstances make an award unjust.

(b) An eligible party that submits an application for award in accordance with this part will receive an award of fees and other expenses incurred in connection with an adversary adjudication in which it prevailed or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the position of FHFA in the adversary adjudication was substantially justified or special circumstances make an award unjust. FHFA has the burden of proof to show that its position was substantially justified and may do so by showing that its position was reasonable in law and in fact.

§ 1203.5 Allowable fees and expenses.

(a) Awards of fees and other expenses will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. However, except as provided in §1203.6, an award for the fee of an attorney or agent may not exceed $125 per hour and an award to compensate an expert witness may not exceed the highest rate at which FHFA pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer will consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the eligible party;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

§ 1203.4 Standards for awards.

(a) An eligible party that files an application for award of fees and other expenses in accordance with this part will receive an award of fees and other expenses incurred in connection with an adversary adjudication in which it prevailed or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the party has committed a willful violation of law or otherwise acted in bad faith, or unless special circumstances make an award unjust. FHFA has the burden of proof to show that its position was substantially justified and may do so by showing that its position was reasonable in law and in fact.

§ 1203.5 Allowable fees and expenses.

(a) Awards of fees and other expenses will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. However, except as provided in §1203.6, an award for the fee of an attorney or agent may not exceed $125 per hour and an award to compensate an expert witness may not exceed the highest rate at which FHFA pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer will consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the eligible party;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and
§ 1203.6 Rulemaking on maximum rate for fees.

If warranted by an increase in the cost of living or by special circumstances, FHFA may adopt regulations providing for an award of attorney or agent fees at a rate higher than $125 per hour in adversary adjudications covered by this part. Special circumstances include the limited availability of attorneys or agents who are qualified to handle certain types of adversary adjudications. FHFA will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553.

§ 1203.7 Awards against other agencies.

If another agency of the United States participates in an adversary adjudication before FHFA and takes a position that was not substantially justified, the award or appropriate portion of the award to an eligible party that prevailed over that agency will be made against that agency.

§§ 1203.8–1203.9 [Reserved]

Subpart B—Information Required From Applicants

§ 1203.10 Contents of the application for award.

(a) An application for award of fees and other expenses under either § 1203.4(a) and § 1203.4(b) must:

(1) Identify the applicant and the adversary adjudication for which an award is sought;
(2) State the amount of fees and other expenses for which an award is sought;
(3) Provide the statements and documentation required by paragraph (b) or (c) of this section and § 1203.12 and any additional information required by the adjudicative officer; and
(4) Be signed by the applicant or an authorized officer or attorney of the applicant and contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) An application for award under § 1203.4(a) must show that the demand of FHFA was substantially in excess of, and was unreasonable when compared to, the decision in the underlying adversary adjudication under the facts and circumstances of the case. It must also show that the applicant is a small entity as defined in 5 U.S.C. 601.

(c) An application for award under § 1203.4(b) must:

(1) Show that the applicant has prevailed in a significant and discrete substantive portion of the underlying adversary adjudication and identify the position of FHFA in the adversary adjudication that the applicant alleges was not substantially justified;
(2) State the number of employees of the applicant and describe briefly the type and purposes of its organization or business (if the applicant is not an individual);
(3) State that the net worth of the applicant does not exceed $2 million, if the applicant is an individual; or for all other applicants, state that the net worth of the applicant and its affiliates, if any, does not exceed $7 million; and
(4) Include one of the following:
(i) A detailed exhibit showing the net worth (net worth exhibit) of the applicant and its affiliates, if any, when the underlying adversary adjudication was initiated. The net worth exhibit may be in any form convenient to the applicant as long as the net worth exhibit provides full disclosure of the assets and liabilities of the applicant and its affiliates, if any, and is sufficient to
§ 1203.21 Response to the application for award.

(a) Agency counsel must file a response within 30 days after service of an application for award of fees and other expenses except as provided in paragraphs (b) and (c) of this section. In the response, agency counsel must explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel must include with the response either supporting affidavits or a request for further proceedings under § 1203.25.

(b) If agency counsel and the applicant believe that the issues in the application for award can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement will extend the time for filing a response for an additional 30 days. Upon request by agency counsel and the applicant, the adjudicative officer may grant for good cause further time extensions.

(c) Agency counsel may request that the adjudicative officer extend the time period for filing a response. If
agency counsel does not respond or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

§ 1203.22 Reply to the response.
Within 15 days after service of a response, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant must include with the reply either supporting affidavits or a request for further proceedings under §1203.25.

§ 1203.23 Comments by other parties.
Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is served, or on a response within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1203.24 Settlement.
The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application must be filed with the proposed settlement.

§ 1203.25 Further proceedings on the application for award.
(a) On request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director under §1203.27, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application for award and will be conducted as promptly as possible. The issue as to whether the position of FHFA in the underlying adversary adjudication was substantially justified will be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section must specifically identify the information sought on the disputed issues and must explain why the additional proceedings are necessary to resolve the issues.

§ 1203.26 Decision of the adjudicative officer.
(a) The adjudicative officer must make the initial decision on the basis of the written record, except if further proceedings are ordered under §1203.25.
(b) The adjudicative officer must issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision will become the final decision of FHFA after 30 days from the day it was issued, unless review is ordered under §1203.27.

(c) In all initial decisions, the adjudicative officer must include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against more than one agency, the adjudicative officer must also include findings and conclusions with respect to the allocation of payment of any award made.

(d) In initial decisions on applications filed pursuant to §1203.4(a), the adjudicative officer must include findings and conclusions as to whether FHFA made a demand that was substantially in excess of the decision in
the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

(e) In decisions on applications filed pursuant to §1203.4(b), the adjudicative officer must include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of FHFA was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether special circumstance make the award unjust.

§ 1203.27 Review by FHFA.

Within 30 days after the adjudicative officer issues an initial decision under §1203.26, either the applicant or agency counsel may request the Director to review the initial decision of the adjudicative officer. The Director may also decide, at his or her discretion, to review the initial decision. If review is ordered, the Director must issue a final decision on the application for award or remand the application for award to the adjudicative officer for further proceedings under §1203.25.

§ 1203.28 Judicial review.

Any party, other than the United States, that is dissatisfied with the final decision on an application for award of fees and expenses under this part may seek judicial review as provided in 5 U.S.C. 504(c)(2).

§ 1203.29 Payment of award.

To receive payment of an award of fees and other expenses granted under this part, the applicant must submit a copy of the final decision that grants the award and a certification that the applicant will not seek review of the decision in the United States courts to the Director, Federal Housing Finance Agency, 400 7th Street SW., Washington, DC 20219. FHFA must pay the amount awarded to the applicant within 60 days of receipt of the submission of the copy of the final decision and the certification, unless judicial review of the award has been sought by any party to the proceedings.

§ 1204.2 What do the terms in this part mean?

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

Access means making a record available to a subject individual.

Amendment means any correction of, addition to, or deletion from a record.

Court means any entity conducting a legal proceeding.

Days, unless stated as “calendar days,” are working days and do not include Saturdays, Sundays, and federal holidays. If the last day of any period prescribed herein falls on a Saturday, Sunday, or federal holiday, the last day of the period will be the next working day that is not a Saturday, Sunday, or federal holiday.

FHFA means the Federal Housing Finance Agency and includes its predecessor agencies, the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB).

FHFA–OIG means the Office of Inspector General for FHFA.


Individual means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.


Privacy Act Appeals Officer means a person designated by the FHFA Director to process appeals of denials of requests for or seeking amendment of records maintained by FHFA under the Privacy Act. For appeals pertaining to records maintained by FHFA–OIG, Privacy Act Appeals Officer means a person designated by the FHFA Inspector General to process appeals of denials of requests for or seeking amendment of records maintained by FHFA–OIG under the Privacy Act.

Privacy Act Officer means a person designated by the FHFA Director who has primary responsibility for privacy and data protection policy and is authorized to process requests for or amendment of records maintained by FHFA under the Privacy Act. For requests pertaining to records maintained by FHFA–OIG, Privacy Act Officer means a person designated by the FHFA Inspector General to process requests for or amendment of records maintained by FHFA–OIG under the Privacy Act.

Record means any item, collection, or grouping of information about an individual that FHFA or FHFA–OIG maintains within a system of records, including, but not limited to, the individual’s name, an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or photograph.

Routine use means the purposes for which records and information contained in a system of records may be disclosed by FHFA or FHFA–OIG without the consent of the subject of the record. Routine use may include the use of records identified in each system of records notice. Routine use does not include disclosure that subsection (b) of the Privacy Act (5 U.S.C. 552a(b)) otherwise permits.

Senior Agency Official for Privacy means a person designated by the FHFA Director who has the authority and responsibility to oversee and supervise the FHFA privacy program and implementation of the Privacy Act.

System of Records means a group of records FHFA or FHFA–OIG maintains or controls from which information is retrieved by the name of an individual.
or by some identifying number, symbol, or other identifying particular assigned to the individual. Single records or groups of records that are not retrieved by a personal identifier are not part of a system of records.

*System of Records Notice* means a notice published in the *Federal Register* which announces the creation, deletion, or amendment of one or more system of records. System of records notices are also used to identify a system of records’ routine uses.

§ 1204.3 How do I make a Privacy Act request?

(a) *What is a valid request?* In general, a Privacy Act request can be made on your own behalf for records or information about you. You can make a Privacy Act request on behalf of another individual as the parent or guardian of a minor, or as the guardian of someone determined by a court to be incompetent. You also may request access to another individual’s record or information if you have that individual’s written consent, unless other conditions of disclosure apply.

(b) *How and where do I make a request?* Your request must be in writing. Regardless of whether your request seeks records from FHFA, FHFA–OIG, or both, you may appear in person to submit your written request to the FHFA Privacy Act Officer, or send your written request to the FHFA Privacy Act Officer by electronic mail, mail, delivery service, or facsimile. The electronic mail address is: privacy@fhfa.gov. For mail or delivery service, the address is: FHFA Privacy Act Officer, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219. The facsimile number is (202) 649–1073. Requests for FHFA–OIG maintained records will be forwarded to FHFA–OIG for processing and direct response. You can help FHFA and FHFA–OIG process your request by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “Privacy Act Request.” FHFA’s “Privacy Act Reference Guide,” which is available on FHFA’s Web site, http://www.fhfa.gov, provides additional information to assist you in making your request.

(c) *What must the request include?* You must describe the record that you want in enough detail to enable either the FHFA or FHFA–OIG Privacy Act Officer to locate the system of records containing it with a reasonable amount of effort. Include specific information about each record sought, such as the time period in which you believe it was compiled, the name or identifying number of each system of records in which you believe it is kept, and the date, title or name, author, recipient, or subject matter of the record. As a general rule, the more specific you are about the record that you want, the more likely FHFA or FHFA–OIG will be able to locate it in response to your request.

(d) *How do I request amendment or correction of a record?* If you are requesting an amendment or correction of any FHFA or FHFA–OIG record, identify each particular record in question and the system of records in which the record is located, describe the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful, including an annotated copy of the record.

(e) *How do I request for an accounting of disclosures?* If you are requesting an accounting of disclosures by FHFA or FHFA–OIG of a record to another person, organization, or Federal agency, you must identify each particular record in question. An accounting generally includes the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or Federal agency to which the disclosure was made, subject to § 1204.7.

(f) *Must I verify my identity?* Yes. When making requests under the Privacy Act, your request must verify your identity to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, FHFA or FHFA–OIG cannot and will not process your request.

(1) *How do I verify my identity?* To verify your identity, you must state your full name, current address, and
§ 1204.4 How will FHFA or FHFA–OIG respond to my Privacy Act request?

(a) How will FHFA or FHFA–OIG locate the requested records? FHFA or FHFA–OIG will search to determine if requested records exist in the system of records it owns or controls. You can find FHFA and FHFA–OIG system of records notices on our Web site at http://www.fhfa.gov. You can also find descriptions of OFHEO and FHFB system of records that have not yet been superseded on the FHFA Web site. A description of the system of records also is available in the “Privacy Act Issuances” compilation published by the Office of the Federal Register of the National Archives and Records Administration. You can access the “Privacy Act Issuances” compilation in most large reference and university libraries or electronically at the Government Printing Office Web site at: http://www.gpoaccess.gov/privacyact/index.html. You also can request a copy of FHFA or FHFA–OIG system of records from the Privacy Act Officer.

(b) How long does FHFA or FHFA–OIG have to respond? Either the FHFA or FHFA–OIG Privacy Act Officer generally will respond to your request in writing within 20 days after receiving it, if it meets the § 1204.3 requirements. For requests to amend a record, either the FHFA or FHFA–OIG Privacy Act Officer will respond within 10 days after receipt of the request to amend. FHFA or FHFA–OIG may extend the response time in unusual circumstances, such as when consultation is needed with another Federal agency (if that agency is subject to the Privacy Act) about a record or to retrieve a record shipped offsite for storage. If you submit your written request in person, either the FHFA or FHFA–OIG Privacy Act Officer may disclose records or information to you directly and create a written record of the grant of the request. If you are to be accompanied by another person when accessing your record or any information pertaining to you, FHFA or
FHFA-OIG may require your written authorization before permitting access or discussing the record in the presence of the other person.

(c) What will the FHFA or FHFA–OIG response include? The written response will include a determination to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the fee charged, if any, under §1204.6. If you are granted a request to access a record, FHFA or FHFA–OIG will make the record available to you. If you are granted a request to amend or correct a record, the response will describe any amendments or corrections made and advise you of your right to obtain a copy of the amended or corrected record.

(d) What is an adverse determination? An adverse determination is a determination on a Privacy Act request that—
1. Withholds any requested record in whole or in part;
2. Denies a request for an amendment or correction of a record in whole or in part;
3. Declines to provide a requested accounting of disclosures;
4. Advises that a requested record does not exist or cannot be located; or
5. Finds what has been requested is not a record subject to the Privacy Act.

(e) What will be stated in a response that includes an adverse determination? If an adverse determination is made with respect to your request, either the FHFA or FHFA–OIG Privacy Act Officer’s written response under this section will identify the person responsible for the adverse determination, state that the adverse determination is not a final action of FHFA or FHFA–OIG, and state that you may appeal the adverse determination under §1204.5.

§1204.5 What if I am dissatisfied with the response to my Privacy Act request?

(a) May I appeal the response? You may appeal any adverse determination made in response to your Privacy Act request. If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

(b) How do I appeal the response?—(1) You may appeal by submitting in writing, a statement of the reasons you believe the adverse determination should be overturned. FHFA or FHFA–OIG must receive your written appeal within 30 calendar days of the date of the adverse determination under §1204.4. Your written appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination (including the request number, if known) that you are appealing.

(2) If FHFA or FHFA–OIG denied your request in whole or in part, you may appeal the denial by writing directly to the FHFA Privacy Act Appeals Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: privacy@fhfa.gov. For mail or express mail, the address is: FHFA Privacy Act Appeals Officer, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20229. The facsimile number is: (202) 649-1073. For appeals of FHFA–OIG denials, whether in whole or in part, the appeal must be clearly marked by adding “FHFA–OIG” after “Privacy Act Appeal.” All appeals from denials, in whole or part, made by FHFA–OIG will be forwarded to the FHFA–OIG Privacy Act Appeals Officer for processing and direct response. You can help FHFA and FHFA–OIG process your appeal by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “Privacy Act Appeal.” FHFA’s “Privacy Act Reference Guide,” which is available on FHFA’s Web site, http://www.fhfa.gov, provides additional information to assist you in making your appeal. FHFA or FHFA–OIG ordinarily will not act on an appeal if the Privacy Act request becomes a matter of litigation.

(3) If you need more time to file your appeal, you may request an extension of time of no more than ten (10) calendar days in which to file your appeal, but only if your request is made within the original 30-calendar day time period for filing the appeal. Granting an extension is in the sole discretion of either the FHFA or FHFA–OIG Privacy Act Appeals Officer.
§ 1204.6 What does it cost to get records under the Privacy Act?

(a) Must I agree to pay fees? Your Privacy Act request is your agreement to pay all applicable fees, unless you specify a limit on the amount of fees you agree to pay. FHFA or FHFA–OIG will not exceed the specified limit without your written agreement.

(b) How does FHFA or FHFA–OIG calculate fees? FHFA and FHFA–OIG will charge a fee for duplication of a record under the Privacy Act in the same way it charges for duplication of records under FOIA in 12 CFR 1202.11. There are no fees to search for or review records.
§ 1204.7 Are there any exemptions from the Privacy Act?

(a) What is a Privacy Act exemption? The Privacy Act authorizes the Director and the FHFA Inspector General to exempt records or information in a system of records from some of the Privacy Act requirements, if the Director or the FHFA Inspector General, as appropriate, determines that the exemption is necessary.

(b) How do I know if the records or information I want are exempt?—(1) Each system of records notice will advise you if the Director or the FHFA Inspector General has determined records or information in records are exempt from Privacy Act requirements. If the Director or the FHFA Inspector General has claimed an exemption for a system of records, the system of records notice will identify the exemption and the provisions of the Privacy Act from which the system is exempt.

(2) Until superseded by FHFA or FHFA–OIG systems of records, the following OFHEO and FHFB systems of records are, under 5 U.S.C. 552a(k)(2) or (k)(5), exempt from the Privacy Act requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f)—

(i) OFHEO–11 Litigation and Enforcement Information System; and

(ii) FHFB–5 Agency Personnel Investigative Records.

(c) What exemptions potentially apply to FHFA–OIG records? Unless the FHFA Inspector General, his or her designee, or a statute specifically authorizes disclosure, FHFA–OIG will not release records of matters that are subject to the following exemptions—

(1) To the extent that the systems of records entitled “FHFA–OIG Audit Files Database,” “FHFA–OIG Investigative & Evaluative Files Database,” “FHFA–OIG Investigative & Evaluative MIS Database,” “FHFA–OIG Hotline Database,” and “FHFA–OIG Correspondence Database” contain any information compiled or used by FHFA–OIG for the purpose of criminal law enforcement investigations, such information falls within the scope of exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), and therefore these systems of records are exempt from the requirements of the following subsections of the Privacy Act to that extent, for the reasons stated in paragraphs (1)(i) through (vi) of this section.

(i) From 5 U.S.C. 552a(c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation or evaluation could reveal the nature and scope of the investigation or evaluation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation or evaluation.

(ii) From 5 U.S.C. 552a(d)(1), because release of investigative or evaluative records to an individual who is the subject of an investigation or evaluation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative or evaluative techniques and procedures.

(iii) From 5 U.S.C. 552a(d)(2), because amendment or correction of investigative or evaluative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative or evaluative burden by requiring FHFA–OIG to continuously retrograde its investigations or evaluations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(iv) From 5 U.S.C. 552a(e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation or evaluation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation or evaluation. In addition, FHFA–OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, FHFA–OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation or...
evaluation, information may be provided to FHFA–OIG that relates to matters incidental to the main purpose of the investigation or evaluation, but which may be pertinent to the investigative or evaluative jurisdiction of another agency. Such information cannot readily be identified.

(v) From 5 U.S.C. 552a(e)(2), because in a law enforcement investigation or an evaluation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation or evaluation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation or evaluation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(vi) From 5 U.S.C. 552a(e)(3), because providing such notice to the subject of an investigation or evaluation, or to other individual sources, could seriously compromise the investigation or evaluation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(2) To the extent that the systems of records entitled “FHFA–OIG Audit Files Database,” “FHFA–OIG Investigative & Evaluative Files Database,” “FHFA–OIG Investigative & Evaluative MIS Database,” “FHFA–OIG Hotline Database,” and “FHFA–OIG Correspondence Database,” contain information compiled by FHFA–OIG for the purpose of criminal law enforcement investigations, such information falls within the scope of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), and therefore these systems of records are exempt from the requirements of the following subsections of the Privacy Act to that extent, for the reasons stated in paragraphs (c)(2)(i) through (iv) of this section.

(i) From 5 U.S.C. 552a(c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation or evaluation could reveal the nature and scope of the investigation or evaluation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation or evaluation.

(ii) From 5 U.S.C. 552a(d)(1), because release of investigative or evaluative records to an individual who is the subject of an investigation or evaluation could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative or evaluative burden by requiring FHFA–OIG to continuously retrograde its investigations or evaluations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(iii) From 5 U.S.C. 552a(d)(2), because amendment or correction of investigative or evaluative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative or evaluative burden by requiring FHFA–OIG to continuously retrograde its investigations or evaluations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(iv) From 5 U.S.C. 552a(e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation or evaluation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation or evaluation. In addition, FHFA–OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, FHFA–OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation or evaluation, information may be provided to FHFA–OIG that relates to matters incidental to the main purpose of the investigation or evaluation but which may be pertinent to the investigative or evaluative jurisdiction of
another agency. Such information cannot readily be identified.

(3) To the extent that the systems of records entitled “FHFA–OIG Audit Files Database,” “FHFA–OIG Investigative & Evaluative Files Database,” “FHFA–OIG Investigative & Evaluative MIS Database,” “FHFA–OIG Hotline Database,” and “FHFA–OIG Correspondence Database” contain any investigatory material compiled by FHFA–OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, such information falls within the scope of exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), and therefore these systems of records are exempt from the requirements of subsection (d)(1) of the Privacy Act to that extent, because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

§ 1204.8 How are records secured?

(a) What controls must FHFA and FHFA–OIG have in place? FHFA and FHFA–OIG must establish administrative and physical controls to prevent unauthorized access to their systems of records, unauthorized or inadvertent disclosure of records, and physical damage to or destruction of records. The stringency of these controls corresponds to the sensitivity of the records that the controls protect. At a minimum, the administrative and physical controls must ensure that—

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) Is access to records restricted? Access to records is restricted to authorized employees who require access in order to perform their official duties.

§ 1204.9 Does FHFA or FHFA–OIG collect and use Social Security numbers?

FHFA and FHFA–OIG collect Social Security numbers only when it is necessary and authorized. At least annually, the FHFA Privacy Act Officer or the Senior Agency Official for Privacy will inform employees who are authorized to collect information that—

(a) Individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) They must inform individuals who are asked to provide their Social Security numbers—

(1) If providing a Social Security number is mandatory or voluntary;

(2) If any statutory or regulatory authority authorizes collection of a Social Security number; and

(3) The uses that will be made of the Social Security number.

§ 1204.10 What are FHFA and FHFA–OIG employee responsibilities under the Privacy Act?

At least annually, the FHFA Privacy Act Officer or the Senior Agency Official for Privacy will inform employees about the provisions of the Privacy Act, including the Privacy Act’s civil liability and criminal penalty provisions. Unless otherwise permitted by law, an authorized FHFA or FHFA–OIG employee shall—

(a) Collect from individuals only information that is relevant and necessary to discharge FHFA or FHFA–OIG responsibilities;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individual from whom information is collected of—

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;
§ 1204.11 May FHFA–OIG obtain Privacy Act records from other Federal agencies for law enforcement purposes?

(a) The FHFA Inspector General is authorized under the Inspector General Act of 1978, as amended, to make written requests under 5 U.S.C. 552a(b)(7) for transfer of records maintained by other Federal agencies which are necessary to carry out an authorized law enforcement activity under the Inspector General Act of 1978, as amended.

(b) The FHFA Inspector General delegates the authority under paragraph (a) of this section to the following FHFA–OIG officials—

(1) Principal Deputy Inspector General;
(2) Deputy Inspector General for Audits;
(3) Deputy Inspector General for Investigations;
(4) Deputy Inspector General for Evaluations; and
(5) Deputy Inspector General for Administration.

(c) The officials listed in paragraph (b) of this section may not further delegate or re-delegate the authority described in paragraph (a) of this section.

PART 1206—ASSESSMENTS

Sec. 1206.1 Purpose.

1206.2 Definitions.

1206.3 Annual assessments.

1206.4 Increased costs of regulation.

1206.5 Working capital fund.

1206.6 Notice and review.

1206.7 Delinquent payment.

1206.8 Enforcement of payment.


SOURCE: 73 FR 56713, Sept. 30, 2008, unless otherwise noted.

§ 1206.1 Purpose.

This part sets forth the policy and procedures of the FHFA with respect to the establishment and collection of the assessments of the Regulated Entities under 12 U.S.C. 4516.

§ 1206.2 Definitions.

As used in this part:


Adequately capitalized means the adequately capitalized capital classification under 12 U.S.C. 1364 and related regulations.

Director means the Director of the Federal Housing Finance Agency or his or her designee.

Enterprise means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and “Enterprises” means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.
Federal Housing Finance Agency

§ 1206.3 Annual assessments.

(a) Establishing assessments. The Director shall establish annual assessments on the Regulated Entities in an amount sufficient to maintain a working capital fund and provide for the payment of the FHFA’s costs and expenses, including, but not limited to:


(2) Expenses of obtaining any reviews and credit assessments under 12 U.S.C. 4519;

(3) Expenses of any enforcement activities under 12 U.S.C. 3645;

(4) Expenses of other FHFA litigation under 12 U.S.C. 4513;

(5) Expenses relating to the maintenance of the FHFA records relating to examinations and other reviews of the Regulated Entities;

(6) Such amounts in excess of actual expenses for any given year deemed necessary to maintain a working capital fund;

(7) Expenses relating to monitoring and ensuring compliance with housing goals;

(8) Expenses relating to conducting reviews of new products;

(9) Expenses related to affordable housing and community programs;

(10) Other administrative expenses of the FHFA;

(11) Expenses related to preparing reports and studies;

(12) Expenses relating to the collection of data and development of systems to calculate the House Price Index (HPI) and the conforming loan limit;

(13) Amounts deemed necessary by the Director to wind up the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board; and

(14) Expenses relating to other responsibilities of the FHFA under the Safety and Soundness Act, the Federal Home Loan Bank Act and the Act.

(b) Allocating assessments. The Director shall allocate the annual assessments as follows:

(1) Enterprises. Assessments collected from the Enterprises shall not exceed amounts sufficient to provide for payment of the costs and expenses relating to the Enterprises as determined by the Director. Each Enterprise shall pay a pro rata share of the annual

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assessments based on the ratio between its minimum required regulatory capital and the aggregate minimum required regulatory capital of every Bank.

(c) **Timing and amount of semiannual payment.** Each Regulated Entity shall pay on or before October 1 and April 1 an amount equal to one-half of its annual assessment.

(d) **Surplus funds.** Surplus funds shall be credited to the annual assessment by reducing the amount collected in the following semiannual period by the amount of the surplus funds. Surplus funds shall be allocated to all Regulated Entities in the same proportion in which they were collected, except as determined by the Director.

§ 1206.4 Increased costs of regulation.

(a) **Increase for inadequate capitalization.** The Director may, at his or her discretion, increase the amount of a semiannual payment allocated to a Regulated Entity that is not classified as adequately capitalized to pay additional estimated costs of regulation of that Regulated Entity.

(b) **Increase for enforcement activities.** The Director may, at his or her discretion, adjust the amount of a semiannual payment allocated to a Regulated Entity to ensure that the Regulated Entity bears the estimated costs of enforcement activities under the Act related to that Regulated Entity.

(c) **Additional assessment for deficiencies.** At any time, the Director may make and collect from any Regulated Entity an assessment, payable immediately or through increased semiannual payments, to cover the estimated amount of any deficiency for the semiannual period as a result of increased costs of regulation of a Regulated Entity due to its classification as other than adequately capitalized, or as a result of enforcement activities related to that Regulated Entity. Any amount remaining from such additional assessment and the semiannual payments at the end of any semiannual period during which such an additional assessment is made shall be deducted pro rata (based upon the amount of the additional assessments) from the assessment for the following semiannual period for that Regulated Entity.

§ 1206.5 Working capital fund.

(a) **Assessments.** The Director shall establish and collect from the Regulated Entities such assessments he or she deems necessary to maintain a working capital fund.

(b) **Purpose.** Assessments collected to maintain the working capital fund shall be used to establish an operating reserve and to provide for the payment of large or multiyear capital and operating expenditures as well as unanticipated expenses.

(c) **Remittance of excess assessed funds.** At the end of each year for which an assessment under this section is made, the Director shall remit to each Regulated Entity any amount of assessed and collected funds in excess of the amount the Director deems necessary to maintain a working capital fund in the same proportions as paid under the most recent annual assessment.

§ 1206.6 Notice and review.

(a) **Written notice of budget.** The Director shall provide to each Regulated Entity written notice of the projected budget for the Agency for the upcoming fiscal year. Such notice shall be provided at least 30 days before the beginning of the applicable fiscal year.

(b) **Written notice of assessments.** The Director shall provide each Regulated Entity with written notice of assessments as follows:

(1) **Annual assessments.** The Director shall provide each Regulated Entity with written notice of the annual assessment and the semiannual payments to be collected under this part. Notice of the annual assessment and semiannual payments shall be provided at least 30 days before the start of the new fiscal year.

(2) **Immediate assessments.** The Director shall provide each Regulated Entity with written notice of any immediate assessment and the required payments shall be provided at such reasonable time as determined by the Director.

(3) **Changes to assessments.** The Director shall provide each Regulated Entity with written notice of any changes in the assessment procedures that the Director, in his or her sole discretion,
deems necessary under the circumstances.

(c) Request for review. At the written request of a Regulated Entity, the Director, in his or her discretion, may review the calculation of the proportional share of the annual assessment, the semiannual payments, and any partial payments to be collected under this part. The determination of the Director upon such review is final. Except as provided by the Director, review by the Director does not suspend the requirement that the Regulated Entity make the semiannual payment or partial payment on or before the date it is due. Any adjustments determined appropriate shall be credited or otherwise addressed by the following year’s assessment for that entity.

§ 1206.7 Delinquent payment.
The Director may assess interest and penalties on any delinquent semiannual payment or other payment assessed under this part in accordance with 31 U.S.C. 3717 (interest and penalty on claims) and part 1704 of this title (debt collection).

§ 1206.8 Enforcement of payment.

PART 1207—MINORITY AND WOMEN INCLUSION

Subpart A—General

§ 1207.1 Definitions.
Sec.
1207.1 Definitions.
1207.2 Policy, purpose, and scope.
1207.3 Limitations.
1207.4–1207.9 [Reserved]

Subpart B—Minority and Women Inclusion and Diversity at the Federal Housing Finance Agency

1207.10–1207.19 [Reserved]

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities and the Office of Finance

1207.20 Office of Minority and Women Inclusion.
§ 1207.2 Policy, purpose, and scope.

(a) General policy. FHFA’s policy is to promote non-discrimination, diversity and, at a minimum, the inclusion of women, minorities, and individuals with disabilities in its own activities and in the business and activities of the regulated entities and the Office of Finance.

(b) Purpose. This part establishes minimum standards and requirements for the regulated entities and the Office of Finance to promote diversity and ensure, to the maximum extent possible in balance with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

(c) Scope. This part applies to each regulated entity’s and the Office of Finance’s implementation of and adherence to diversity, inclusion and non-discrimination policies, practices and principles.

§ 1207.3 Limitations.

(a) Except as expressly provided herein for enforcement by FHFA, the regulations in this part do not, are not intended to, and should not be construed to create any right or benefit, substantive or procedural, enforceable at law, in equity, or through administrative proceeding, by any party against the United States, its departments,
Federal Housing Finance Agency

§ 1207.21 Equal opportunity in employment and contracting.

(a) Equal opportunity notice. Each regulated entity and the Office of Finance shall publish a statement, endorsed by its Chief Executive Officer and approved by its Board of Directors, confirming its commitment to the principles of equal opportunity in employment and in contracting, at a minimum regardless of color, national origin, sex, religion, age, disability status, or genetic information. The notice also shall confirm commitment against retaliation or reprisal. Publication shall include, at a minimum, conspicuous posting in all regulated entity and Office of Finance physical facilities, including through alternative media formats, as necessary, and accessible posting on the regulated entity’s and the Office of Finance’s Web site. The notice shall be updated and re-published, re-endorsed by the Chief Executive Officer and re-approved by the Board of Directors annually.

(b) Policies and procedures. Each regulated entity and the Office of Finance shall develop, implement, and maintain policies and procedures to ensure, to the maximum extent possible in balance with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity and the Office of Finance, including in management, employment, procurement, insurance, and all types of contracts. The policies and procedures of each regulated entity and the Office of Finance at a minimum shall:

(1) Confirm its adherence to the principles of equal opportunity and non-discrimination in employment and in contracting;
§ 1207.22 Regulated entity and Office of Finance reports.

(a) General. Each regulated entity and the Office of Finance, through its Office of Minority and Women Inclusion, or other office designated to perform the responsibilities of this part, shall report in writing, in such format as the Director may require, to the Director describing its efforts to promote diversity and ensure the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services and the results of such efforts.

§ 1207.22 Regulated entity and Office of Finance reports.

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(b) Outreach for contracting. Each regulated entity and the Office of Finance shall establish a program for outreach designed to ensure to the maximum extent possible the inclusion in contracting opportunities of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses. The program at a minimum shall:

(1) Apply to all contracts entered into by the regulated entity or the Office of Finance, including contracts with financial institutions, investment banking firms, investment consultants or advisors, financial services entities, mortgage banking firms, asset management entities, underwriters, accountants, brokers, brokers-dealers, and providers of legal services;

(2) Establish policies, procedures and standards requiring the publication of contracting opportunities designed to encourage contractors that are minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses to submit offers or bid for the award of such contracts; and

(3) Ensure the consideration of the diversity of a contractor when the regulated entity or the Office of Finance reviews and evaluates offers from contractors.

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§ 1207.23 Annual reports—format and contents.

(a) Format. Each annual report shall consist of a detailed summary of the regulated entity’s or the Office of Finance’s activities during the reporting year to carry out the requirements of this part, which report may also be made a part of the regulated entity’s or the Office of Finance’s annual report to the Director. The report shall contain a table of contents and conclude with a certification by the regulated entity’s or the Office of Finance’s officer responsible for the annual report that the data and information presented in the report are accurate, and are approved for submission.

(b) Contents. The annual report shall contain the information provided in the regulated entity’s or the Office of Finance’s annual summary pursuant to §1207.22(d) and, in addition to any other information or data the Director may require, shall include:

(1) The EEO–1 Employer Information Report (Form EEO–1 used by the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) to collect certain demographic information) or similar reports filed by the regulated entity or the Office of Finance during the reporting year. If the annual reports—format and contents.

(a) Format. Each annual report shall consist of a detailed summary of the regulated entity’s or the Office of Finance’s activities during the reporting year to carry out the requirements of this part, which report may also be made a part of the regulated entity’s or the Office of Finance’s annual report to the Director. The report shall contain a table of contents and conclude with a certification by the regulated entity’s or the Office of Finance’s officer responsible for the annual report that the data and information presented in the report are accurate, and are approved for submission.

(b) Contents. The annual report shall contain the information provided in the regulated entity’s or the Office of Finance’s annual summary pursuant to §1207.22(d) and, in addition to any other information or data the Director may require, shall include:

(1) The EEO–1 Employer Information Report (Form EEO–1 used by the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) to collect certain demographic information) or similar reports filed by the regulated entity or the Office of Finance during the reporting year. If the
regulated entity or the Office of Finance does not file Form EEO-1 or similar reports, the regulated entity or the Office of Finance shall submit to FHFA a completed Form EEO-1;

(2) All other reports or plans the regulated entity or the Office of Finance submitted to the EEOC, the Department of Labor, OFCCP or Congress ("reports or plans" is not intended to include separate complaints or charges of discrimination or responses thereto) during the reporting year;

(3) Data showing by minority and gender the number of individuals applying for employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO-1 during the reporting year;

(4) Data showing by minority and gender the number of individuals hired for employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO-1 during the reporting year;

(5) Data showing by minority, gender and disability classification, and categorized as voluntary or involuntary, the number of separations from employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO-1 during the reporting year;

(6) Data showing the number of requests for reasonable accommodation received from employees and applicants for employment, the number of requests granted, and the disabilities accommodated and the types of accommodation granted during the reporting year;

(7) Data showing for the reporting year by minority, gender, and disability classification the number of individuals applying for promotion at the regulated entity or the Office of Finance—

(i) Within each occupational or job category identified on the Form EEO-1; and

(ii) From one such occupational or job category to another;

(8) Data showing by minority, gender, and disability classification the number of individuals—

(i) Promoted at the regulated entity or the Office of Finance within each occupational or job category identified on the Form EEO-1, after applying for such a promotion;

(ii) Promoted at the regulated entity or the Office of Finance within each occupational or job category identified on the Form EEO-1, without applying for such a promotion; and

(iii) Promoted at the regulated entity or the Office of Finance from one occupational or job category identified on the Form EEO-1 to another such category, after applying for such a promotion;

(9)(i) Data showing for the reporting year by minority and gender classification, the number of individuals on the board of directors of each Bank and the Office of Finance—

(A) Using data collected by each Bank and the Office of Finance through an information collection requesting each director's voluntary self-identification of his or her minority and gender classification without personally identifiable information;

(B) Using the same classifications as those on the Form EEO-1; and

(ii) A description of the outreach activities and strategies executed during the preceding year to promote diversity in nominating or soliciting nominees for positions on boards of directors of the Banks (consistent with 12 CFR 1261.9) and the Office of Finance;

(10) A comparison of the data reported by Fannie Mae and Freddie Mac under paragraphs (b)(1) through (8) of this section, and by the Banks and the Office of Finance under paragraphs (b)(1) through (9) of this section, to such data as reported in the previous year together with a narrative analysis;

(11) Descriptions of all regulated entity or Office of Finance outreach activity during the reporting year to recruit individuals who are minorities, women, or persons with disabilities for employment, to solicit or advertise for minority or minority-owned, women or women-owned, and disabled-owned contractors or contractors who are individuals with disabilities to offer proposals or bids to enter into business with the regulated entity or Office of Finance, or to inform such contractors of the regulated entity's or Office of Finance's contracting process, including
the identification of any partners, organizations, or government offices with which the regulated entity or the Office of Finance participated in such outreach activity;

(12) Cumulative data separately showing the number of contracts entered with minorities or minority-owned businesses, women or women-owned businesses and individuals with disabilities or disabled-owned businesses during the reporting year;

(13) Cumulative data separately showing, for the reporting year, the total amount the regulated entity or the Office of Finance paid to contractors that are minorities or minority-owned businesses, women or women-owned and individuals with disabilities or disabled-owned businesses;

(14) The annual total of amounts paid to contractors and the percentage of which was paid separately to minorities or minority-owned businesses, women or women-owned businesses and individuals with disabilities or disabled-owned businesses during the reporting year;

(15) Certification of compliance with §§1207.20 and 1207.21, together with sufficient documentation to verify compliance;

(16) Data for the reporting year showing, separately, the number of equal opportunity complaints (including administrative agency charges or complaints, arbitral or judicial claims) against the regulated entity or the Office of Finance that—

(i) Claim employment discrimination, by basis or kind of the alleged discrimination (race, sex, disability, etc.) and by result (settlement, favorable, or unfavorable outcome);

(ii) Claim discrimination in any aspect of the contracting process or administration of contracts, by basis of the alleged discrimination and by result; and

(iii) Were resolved through the regulated entity’s or the Office of Finance’s internal processes;

(17) Data showing for the reporting year amounts paid to claimants by the regulated entity or the Office of Finance for settlements or judgments on discrimination complaints—

(i) In employment, by basis of the alleged discrimination; and

(ii) In any aspect of the contracting process or in the administration of contracts, by basis of the alleged discrimination;

(18) A comparison of the data reported under paragraphs (b)(12) and (b)(13) of this section with the same information reported for the previous year;

(19) A narrative identification and analysis of the reporting year’s activities the regulated entity or the Office of Finance considers successful and unsuccessful in achieving the purpose and policy of regulations in this part and a description of progress made from the previous year; and

(20) A narrative identification and analysis of business activities, levels, and areas in which the regulated entity’s or the Office of Finance’s efforts need to improve with respect to achieving the purpose and policy of regulations in this part, together with a description of anticipated efforts and results the regulated entity or the Office of Finance expects in the succeeding year.

§ 1207.24 Enforcement.
The Director may enforce this regulation and standards issued under it in any manner and through any means within his or her authority, including through identifying matters requiring attention, corrective action orders, directives, or enforcement actions under 12 U.S.C. 4513b and 4514. The Director may conduct examinations of a regulated entity’s or the Office of Finance’s activities under and in compliance with this part pursuant to 12 U.S.C. 4517.

PART 1208—DEBT COLLECTION

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Subpart A—General

Source: 75 FR 68958, Nov. 10, 2010, unless otherwise noted.
§ 1208.2 Definitions.

The following terms apply to this part, unless defined otherwise elsewhere:

Administrative offset means an action, pursuant to 31 U.S.C. 3716, in which the Federal Government withholds funds payable to, or held by the Federal Government for a person, organization, or other entity in order to collect a debt from that person, organization, or other entity. Such funds include funds payable by the Federal Government on behalf of a State Government.

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation. If an agency under this definition is a component of an agency, the broader definition of agency may be used in applying the provisions of 5 U.S.C. 5514(b) (concerning the authority to prescribe regulations).

Centralized administrative offset means the mandatory referral to the Secretary of the Treasury by a creditor agency of a past due debt which is more than 180 days delinquent, for the purpose of collection under the Treasury’s centralized offset program.

Certification means a written statement received by a paying agency from a creditor agency that requests the paying agency to institute salary offset of an employee, to the Financial Management Service (FMS) for offset or to the Secretary of the Treasury for centralized administrative offset, and specifies that required procedural protections have been afforded the debtor. Where the debtor requests a hearing on a claimed debt, the decision by a hearing official or administrative law judge constitutes a certification.

Claim or debt (used interchangeably in this part) means any amount of funds or property that has been determined by an agency official to be due the Federal Government by a person, organization, or entity, except another agency. It also means any amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. For purposes of this part, a debt owed to FHFA constitutes a debt owed to the Federal Government. A claim or debt includes:

1. Funds owed on account of loans made, insured, or guaranteed by the Federal Government, including any deficiency or any difference between the price obtained by the Federal Government in the sale of a property and the amount owed to the Federal Government on a mortgage on the property;

2. Unauthorized expenditures of agency funds;

3. Overpayments, including payments disallowed by audits performed;
§ 1208.2  

by the Inspector General of the agency administering the program:

(4) Any amount the Federal Government is authorized by statute to collect for the benefit of any person;

(5) The unpaid share of any non-Federal partner in a program involving a Federal payment, and a matching or cost-sharing payment by the non-Federal partner;

(6) Any fine or penalty assessed by an agency; and

(7) Other amounts of money or property owed to the Federal Government.

Compromise means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards set forth in the FCCS and applicable Federal law.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Debt collection center means the Department of the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debtor means the person, organization, or entity owing money to the Federal Government.

Delinquent debt means a debt that has not been paid by the date specified in the agency’s initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Director means the Director of FHFA or Director’s designee.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, or retainer pay (or in the case of an employee not entitled to basic pay, other authorized pay) remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). FHFA will apply the order of precedence contained in OPM guidance (PPM–2008–01; Order Of Precedence When Gross Pay Is Not Sufficient To Permit All Deductions), as follows—

(1) Retirement deductions for defined benefit plan (including Civil Service Retirement System, Federal Employees Retirement System, or other similar defined benefit plan);

(2) Social security (OASDI) tax;

(3) Medicare tax;

(4) Federal income tax;

(5) Basic health insurance premium (including Federal Employees Health Benefits premium, pre-tax or post-tax, or premium for similar benefit under another authority but not including amounts deducted for supplementary coverage);

(6) Basic life insurance premium (including Federal Employees’ Group Life Insurance—FEGLI—Basic premium or premium for similar benefit under another authority);

(7) State income tax;

(8) Local income tax;

(9) Collection of debts owed to the U.S. Government (e.g., tax debt, salary overpayment, failure to withhold proper amount of deductions, advance of salary or travel expenses, etc.; debts which may or may not be delinquent; debts which may be collected through the Treasury’s Financial Management Services Treasury Offset Program, an automated centralized debt collection program for collecting Federal debt from Federal payments):

(i) Continuous levy under the Federal Payment Levy Program (tax debt); and

(ii) Salary offsets (whether involuntary under 5 U.S.C. 5514 or similar authority or required by a voluntarily signed written agreement; if multiple debts are subject to salary offset, the order is based on when each offset commenced—with earliest commencing offset at the top of the order)—unless there are special circumstances, as determined by the paying agency.

(10) Court-Ordered collection/debt:

(i) Child support (may include attorney and other fees as provided for in 5 CFR 581.102(d)). If there are multiple child support orders, the priority of orders is governed by 42 U.S.C. 666(b) and implementing regulations, as required by 42 U.S.C. 659(d)(2);

(ii) Alimony (may include attorney and other fees as provided for in 5 CFR
871.102(d)). If there are multiple alimony orders, they are prioritized on a first-come, first-served basis, as required by 42 U.S.C. 659(d)(3); (iii) Bankruptcy; and (iv) Commercial garnishments.

(11) Optional benefits:
(i) Health care/limited-expense health care flexible spending accounts (pre-tax benefit under FedFlex or equivalent cafeteria plan);
(ii) Dental (pre-tax benefit under FedFlex or equivalent cafeteria plan);
(iii) Vision (pre-tax benefit under FedFlex or equivalent cafeteria plan);
(iv) Health Savings Account (pre-tax benefit under FedFlex or equivalent cafeteria plan);
(v) Optional life insurance premiums (FEGLI optional benefits or similar benefits under other authority);
(vi) Long-term care insurance premiums;
(vii) Dependent-care flexible spending accounts (pre-tax benefit under FedFlex or equivalent cafeteria plan);
(viii) Thrift Savings Plan (TSP):
(A) Loan payments;
(B) Basic contributions; and
(C) Catch-up contributions; and
(ix) Other optional benefits.

(12) Other voluntary deductions/allotments:
(i) Military service deposits;
(ii) Professional associations;
(iii) Union dues;
(iv) Charities;
(v) Bonds;
(vi) Personal account allotments (e.g., to savings or checking account); and
(vii) Additional voluntary deductions (on first-come, first-served basis); and

Employee means a current employee of FHFA or other agency, including a current member of the Armed Forces or a Reserve of the Armed Forces of the United States.

Federal Claims Collection Standards (FCCS) means standards published at 31 CFR chapter IX.

FHFA means the Federal Housing Finance Agency.

Garnishment means the process of withholding amounts from the disposable pay of a person employed outside the Federal Government, and the paying of those amounts to a creditor in satisfaction of a withholding order.

Hearing official means an individual who is responsible for conducting any hearing with respect to the existence or amount of a debt claimed and for rendering a final decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of FHFA when FHFA is the creditor agency but may be an administrative law judge.

Notice of intent means a written notice of a creditor agency to a debtor that states that the debtor owes a debt to the creditor agency and apprises the debtor of the applicable procedural rights.

Notice of salary offset means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency that informs the employee that salary offset will begin at the next officially established pay interval.

Paying agency means an agency of the Federal Government that employs the individual who owes a debt to an agency of the Federal Government and transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The same agency may be both the creditor agency and the paying agency.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to FHFA or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial, or administrative body. For purposes of administrative wage garnishment, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”
§ 1208.3 Referrals to the Department of the Treasury, collection services, and use of credit bureaus.

(a) Referral of delinquent debts. (1) FHFA shall transfer to the Secretary of the Department of the Treasury any past due, legally enforceable nontax debt that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the debt or terminate collection action in accordance with 31 U.S.C. 3716, 5 U.S.C. 5514, 5 CFR 550.1108, 31 CFR part 285, and the FCCS.

(2) FHFA may transfer any past due, legally enforceable nontax debt that has been delinquent for less than a period of 180 days to a debt collection center for collection in accordance with 31 U.S.C. 3716, 5 U.S.C. 5514, 5 CFR 550.1108, 31 CFR part 285, and the FCCS.

(b) Collection Services. Section 13 of the Debt Collection Act (31 U.S.C. 3718) authorizes agencies to enter into contracts for collection services to recover debts owed the Federal Government. The Debt Collection Act requires that certain provisions be contained in such contracts, including:

(1) The agency retains the authority to resolve a dispute, including the authority to terminate a collection action or refer the matter to the Attorney General for civil remedies; and

(2) The contractor is subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(iii) The contractor is required to strictly account for all amounts collected;

(iv) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable FHFA to determine whether to pursue collection through litigation or to terminate collection; and

(v) The contractor must agree to provide any data in its files requested by FHFA upon returning the account to FHFA for subsequent referral to the Department of Justice for litigation.

§ 1208.4 Reporting delinquent debts to credit bureaus.

(a) FHFA may report delinquent debts to consumer reporting agencies (31 U.S.C. 3701(a)(3), 3711). Sixty calendar days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. The notice shall be in conformance with 31 U.S.C. 3711(e) and the FCCS. In the notice, FHFA shall provide the debtor with:

(1) An opportunity to inspect and copy agency records pertaining to the debt;

(2) An opportunity for an administrative review of the legal enforceability or past due status of the debt;

(3) An opportunity to enter into a repayment agreement on terms satisfactory to FHFA to prevent FHFA from reporting the debt as overdue to consumer reporting agencies, and provide deadlines and method for requesting this relief;

(4) An explanation of the rate of interest that will accrue on the debt, that all costs incurred to collect the debt will be charged to the debtor, the authority for assessing these costs, and
§ 1208.21 Notice requirements before salary offset where FHFA is the creditor agency.

(a) Notice of Intent. Deductions from an employee’s salary may not be made unless FHFA provides the employee with a Notice of Intent at least 30 calendar days before the salary offset is initiated.

(b) Contents of Notice of Intent. The Notice of Intent shall advise the employee of the following:

1. That FHFA has reviewed the records relating to the claim and has determined that the employee owes the debt;

2. That FHFA intends to collect the debt by deductions from the employee’s current disposable pay account;

3. That FHFA will report the debt to the consumer reporting agencies to the detriment of the debtor’s credit rating; and

4. A description of the collection actions that the agency may take in the future if those presently proposed actions do not result in repayment of the debt, including the filing of a lawsuit against the borrower by the agency and assignment of the debt for collection by offset against Federal income tax refunds or the filing of a lawsuit against the debtor by the Federal Government.

(b) Scope. (1) The procedures set forth in this subpart B apply to situations where FHFA is attempting to collect a debt by salary offset that is owed to it by an individual employed by FHFA or by another agency; or where FHFA employs an individual who owes a debt to another agency.

(2) The procedures set forth in this subpart B do not apply to:

(i) Any routine intra-agency adjustment of pay that is attributable to clerical or administrative error or delay in processing pay documents that have occurred within the four pay periods preceding the adjustment, or any adjustment to collect a debt amounting to $50 or less. However, at the time of any such adjustment, or as soon thereafter as possible, FHFA or its designated payroll agent shall provide the employee with a written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(ii) Any negative adjustment to pay that arises from an employee’s election of coverage or a change in coverage under a Federal benefits program that requires periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, at the time such adjustment is made, FHFA or its payroll agent shall provide in the employee’s earnings statement a clear and concise statement that informs the employee of the previous overpayment.
(3) The amount of the debt and the facts giving rise to the debt;
(4) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay), and the intention to continue the deductions until the debt and all accumulated interest are paid in full or otherwise resolved;
(5) The name, address, and telephone number of the person to whom the employee may propose a written alternative schedule for voluntary repayment, in lieu of salary offset. The employee shall include a justification for the alternative schedule in his or her proposal. If the terms of the alternative schedule are agreed upon by the employee and FHFA, the alternative written schedule shall be signed by both the employee and FHFA;
(6) An explanation of FHFA’s policy concerning interest, penalties, and administrative costs, the date by which payment should be made to avoid such costs, and a statement that such assessments must be made unless excused in accordance with the FCCS;
(7) The employee’s right to inspect and copy all records of FHFA pertaining to his or her debt that are not exempt from disclosure or to receive copies of such records if he or she is unable personally to inspect the records as the result of geographical or other constraints;
(8) The name, address, and telephone number of the FHFA employee to whom requests for access to records relating to the debt must be sent;
(9) The employee’s right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt claimed or the repayment schedule i.e., the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed in §1208.23; the name and address of the office to which the request for a hearing should be sent; and the name, address, and telephone number of a person whom the employee may contact concerning procedures for requesting a hearing;
(10) The filing of a request for a hearing on or before the 30th calendar day following receipt of the Notice of Intent will stay the commencement of collection proceedings and a final decision on whether a hearing will be held (if a hearing is requested) or will be issued at the earliest practical date, but not later than 60 calendar days after the request for the hearing;
(11) FHFA shall initiate certification procedures to implement a salary offset unless the employee files a request for a hearing on or before the 30th calendar day following receipt of the Notice of Intent;
(12) Any knowingly false or frivolous statement, representations, or evidence may subject the employee to:
(i) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;
(ii) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or under any other applicable statutory authority; or
(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;
(13) That the employee also has the right to request waiver of overpayment pursuant to 5 U.S.C. 5584 and may exercise any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;
(14) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the Federal Government shall be promptly refunded to the employee; and
(15) Proceedings with respect to the debt are governed by 5 U.S.C. 5514.

§ 1208.22 Review of FHFA records related to the debt.

(a) Request for review. An employee who desires to inspect or copy FHFA records related to a debt owed by the employee to FHFA must send a letter to the individual designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of that individual within 15 calendar days after the employee’s receipt of the Notice of Intent.
(b) **Review location and time.** In response to a timely request submitted by the employee, the employee shall be notified of the location and time when the employee may inspect and copy records related to his or her debt that are not exempt from disclosure. If the employee is unable personally to inspect such records as the result of geographical or other constraints, FHFA shall arrange to send copies of such records to the employee. The debtor shall pay copying costs unless they are waived by FHFA. Copying costs shall be assessed pursuant to FHFA’s Freedom of Information Act Regulation, 12 CFR part 1202.

§ 1208.23 **Opportunity for a hearing where FHFA is the creditor agency.**

(a) **Request for a hearing.** (1) **Time-period for submission.** An employee who requests a hearing on the existence or amount of the debt held by FHFA or on the salary-offset schedule proposed by FHFA, must send a written request to FHFA. The request for a hearing must be received by FHFA on or before the 30th calendar day following receipt by the employee of the Notice of Intent.

(2) **Failure to submit timely.** If the employee files a request for a hearing after the expiration of the 30th calendar day, the employee shall not be entitled to a hearing. However, FHFA may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(3) **Contents of request.** The request for a hearing must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The employee must also specify whether he or she requests an oral hearing. If an oral hearing is requested, the employee should explain why a hearing by examination of the documents without an oral hearing would not resolve the matter.

(4) **Failure to request a hearing.** The failure of an employee to request a hearing will be considered an admission by the employee that the debt exists in the amount specified in the Notice of Intent that was provided to the employee under §1208.21(b).

(b) **Obtaining the services of a hearing official.** (1) **Debtor is not an FHFA employee.** When the debtor is not an FHFA employee and FHFA cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, FHFA may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency. The paying agency must cooperate with FHFA to provide a hearing official, as required by the PCCS.

(2) **Debtor is an FHFA employee.** When the debtor is an FHFA employee, FHFA may contact any agent of another agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the agency, to request a hearing official.

(c) **Procedure.** (1) **Notice of hearing.** After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be conducted by an examination of documents, the employee shall be notified within 30 calendar days that he or she should submit evidence and arguments in writing to the hearing official within 30 calendar days.

(2) **Oral hearing.** (i) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by an examination of the documents alone, as for example, when an issue of credibility or veracity is involved. The oral hearing need not be an adversarial adjudication; and rules of evidence need not apply. Witnesses who testify in an oral hearing shall do so under oath or affirmation.

(ii) Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative are given
§ 1208.24 Certification where FHFA is the creditor agency.

(a) Issuance. FHFA shall issue a certification in all cases where the hearing official determines that a debt exists or the employee admits the existence and amount of the debt, as for example, by failing to request a hearing.

(b) Contents. The certification must be in writing and state:

(1) That the employee owes the debt;
(2) The amount and basis of the debt;
(3) The date the Federal Government’s right to collect the debt first accrued;
(4) The date the employee was notified of the debt, the action(s) taken pursuant to FHFA’s regulations, and the dates such actions were taken;
(5) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;
(6) If the collection is to be made in installments through salary offset, the amount or percentage of disposable pay to be collected in each installment and, if FHFA wishes, the desired commencing date of the first installment, if a date other than the next officially established pay period; and
(7) A statement that FHFA’s regulation on salary offset has been approved by OPM pursuant to 5 CFR part 550, subpart K.

§ 1208.25 Voluntary repayment agreements as alternative to salary offset where FHFA is the creditor agency.

(a) Proposed repayment schedule. In response to a Notice of Intent, an employee may propose to repay the debt voluntarily in lieu of salary offset by submitting a written proposed repayment schedule to FHFA. Any proposal under this section must be received by FHFA within 30 calendar days after receipt of the Notice of Intent.

(b) Notification of decision. In response to a timely proposal by the employee, FHFA shall notify the employee whether the employee’s proposed repayment schedule is acceptable. FHFA
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has the discretion to accept, reject, or propose to the employee a modification of the proposed repayment schedule.  
(1) If FHFA decides that the proposed repayment schedule is unacceptable, the employee shall have 30 calendar days from the date he or she received notice of the decision in which to file a request for a hearing.  
(2) If FHFA decides that the proposed repayment schedule is acceptable or the employee agrees to a modification proposed by FHFA, an agreement shall be put in writing and signed by both the employee and FHFA.

§ 1208.26 Special review where FHFA is the creditor agency.

(a) Request for review. (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by FHFA of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability.  
(2) The request for special review must include an alternative proposed offset or payment schedule and a detailed statement, with supporting documents, that shows why the current salary offset or payments result in extreme financial hardship to the employee and his or her spouse and dependents. The detailed statement must indicate:  
(i) Income from all sources;  
(ii) Assets;  
(iii) Liabilities;  
(iv) Number of dependents;  
(v) Expenses for food, housing, clothing, and transportation;  
(vi) Medical expenses; and  
(vii) Exceptional expenses, if any.  
(b) Evaluation of request. FHFA shall evaluate the statement and supporting documents and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee, for example, by preventing the employee from meeting essential subsistence expenses such as food, housing, clothing, transportation, and medical care. FHFA shall notify the employee in writing within 30 calendar days of such determination, including, if appropriate, a revised offset or payment schedule. If the special review results in a revised offset or repayment schedule, FHFA shall provide a new certification to the paying agency.

§ 1208.27 Notice of salary offset where FHFA is the paying agency.

(a) Notice. Upon issuance of a proper certification by FHFA (for debts owed to FHFA) or upon receipt of a proper certification from another creditor agency, FHFA shall send the employee a written notice of salary offset.  
(b) Content of notice. Such written notice of salary offset shall advise the employee of the:  
(1) Certification that has been issued by FHFA or received from another creditor agency;  
(2) Amount of the debt and of the deductions to be made; and  
(3) Date and pay period when the salary offset will begin.  
(c) If FHFA is not the creditor agency, FHFA shall provide a copy of the notice of salary offset to the creditor agency and advise the creditor agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 1208.28 Procedures for salary offset where FHFA is the paying agency.

(a) Generally. FHFA shall coordinate salary deductions under this section and shall determine the amount of an employee’s disposable pay and the amount of the salary offset or payments result in extreme financial hardship to the employee and his or her spouse and dependents. The detailed statement must indicate:  
(i) Income from all sources;  
(ii) Assets;  
(iii) Liabilities;  
(iv) Number of dependents;  
(v) Expenses for food, housing, clothing, and transportation;  
(vi) Medical expenses; and  
(vii) Exceptional expenses, if any.  
(b) Evaluation of request. FHFA shall evaluate the statement and supporting documents and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee, for example, by preventing the employee from meeting essential subsistence expenses such as food, housing, clothing, transportation, and medical care. FHFA shall notify the employee in writing within 30 calendar days of such determination, including, if appropriate, a revised offset or payment schedule. If the special review results in a revised offset or repayment schedule, FHFA shall provide a new certification to the paying agency.
§ 1208.29 Coordinating salary offset with other agencies.

(a) Responsibility of FHFA as the creditor agency. (1) FHFA shall be responsible for:

(i) Arranging for a hearing upon proper request by a Federal employee;

(ii) Preparing the Notice of Intent consistent with the requirements of §1208.21;

(iii) Obtaining hearing officials from other agencies pursuant to §1208.23(b); and

(iv) Ensuring that each certification of debt pursuant to §1208.24(b) is sent to a paying agency.

(2) Upon completion of the procedures set forth in §§1208.24 through 1208.26, FHFA shall submit to the employee’s paying agency, if applicable, a certified debt claim and an installment agreement or other instruction on the payment schedule.

(i) If the employee is in the process of separating from the Federal Government, FHFA shall submit its debt claim to the employee’s paying agency for collection by lump-sum deduction from the employee’s final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to FHFA and to the employee.

(ii) If the employee is already separated and all payments due from his or her former paying agency have been paid, FHFA may, unless otherwise prohibited, request that money due and payable to the employee from the Federal Government, including payments from the Civil Service Retirement and Disability Fund (5 CFR 831.1801) or other similar funds, be administratively offset to collect the debt.

(b) Types of collection—(1) Lump-sum payment. If the amount of the debt is equal to or less than 15 percent of the employee’s disposable pay, such debt ordinarily will be collected in one lump-sum payment.

(2) Installment deductions. Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee’s ability to pay. However, the amount deducted for any pay period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount. The installment payment should normally be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $50 should be accepted only in the most unusual circumstances.

(3) Lump-sum deductions from final check. In order to liquidate a debt, a lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 from any final salary payment due a former employee, whether the former employee was separated voluntarily or involuntarily.

(4) Lump-sum deductions from other sources. Whenever an employee subject to salary offset is separated from FHFA, and the balance of the debt cannot be liquidated by offset of the final salary check, FHFA may offset any later payments of any kind to the former employee to collect the balance of the debt pursuant to 31 U.S.C. 3716.

(c) Where appropriate, FHFA shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

(d) Where appropriate, FHFA shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

(e) Multiple debts—(1) Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, FHFA may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.
(iii) When an employee transfers to another paying agency, FHFA shall not repeat the procedures described in §§1208.24 through 1208.26. Upon receiving notice of the employee’s transfer, FHFA shall review the debt to ensure that collection is resumed by the new paying agency.

(b) Responsibility of FHFA as the paying agency—

(1) Complete claim. When FHFA receives a certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. Deductions shall be scheduled to begin at the next officially established pay interval or as otherwise provided for in the certification.

(2) Incomplete claim. When FHFA receives an incomplete certification of debt from a creditor agency, FHFA shall return the claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed, and that a properly certified claim must be received before FHFA will take action to collect the debt from the employee’s current pay account.

(3) Review. FHFA is not authorized to review the merits of the creditor agency’s determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from one paying agency to another agency. If, after the creditor agency has submitted the debt claim to FHFA, the employee transfers to another agency before the debt is collected in full, FHFA must certify the total amount collected on the debt as required by 5 CFR 550.1104. One copy of the certification shall be furnished to the employee and one copy shall be sent to the creditor agency along with notice of the employee’s transfer. If FHFA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in 5 CFR part 550, subpart K, have been met. FHFA must submit a properly certified claim to the new payment agency before a collection can be made.

§ 1208.30 Interest, penalties, and administrative costs.

Where FHFA is the creditor agency, FHFA shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and the FCCS, 31 CFR chapter IX.

§ 1208.31 Refunds.

(a) Where FHFA is the creditor agency, FHFA shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when:

(1) FHFA receives notice that the debt has been waived or otherwise found not to be owing to the Federal Government; or

(2) An administrative or judicial order directs FHFA to make a refund.

(b) Unless required by law or contract, refunds under this section shall not bear interest.

§ 1208.32 Request from a creditor agency for the services of a hearing official.

(a) FHFA may provide qualified personnel to serve as hearing officials upon request of a creditor agency when:

(1) The debtor is employed by FHFA and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement; or

(2) The debtor is employed by the creditor agency and that agency cannot arrange for a hearing official.

(b) Services provided by FHFA to creditor agencies under this section shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535, or other applicable authority.

§ 1208.33 Non-waiver of rights by payments.

A debtor’s payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this subpart B shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract, except as otherwise provided by law or contract.
§ 1208.40 Authority and scope.

(a) The provisions of this subpart C apply to the collection of debts owed to the Federal Government arising from transactions with FHFA. Administrative offset is authorized under the Debt Collection Improvement Act of 1996 (DCIA). This subpart C is consistent with the Federal Claims Collection Standards (FCCS) on administrative offset issued by the Department of Justice.

(b) FHFA may collect a debt owed to the Federal Government from a person, organization, or other entity by administrative offset, pursuant to 31 U.S.C. 3716, where:

(1) The debt is certain in amount;
(2) Administrative offset is feasible, desirable, and not otherwise prohibited;
(3) The applicable statute of limitations has not expired; and
(4) Administrative offset is in the best interest of the Federal Government.

§ 1208.41 Collection.

(a) FHFA may collect a claim from a person, organization, or other entity by administrative offset of monies payable by the Federal Government only after:

(1) Providing the debtor with due process required under this part; and
(2) Providing the paying agency with written certification that the debtor owes the debt in the amount stated and that FHFA, as creditor agency, has complied with this part.

(b) Prior to initiating collection by administrative offset, FHFA should determine that the proposed offset is within the scope of this remedy, as set forth in 31 CFR 901.3(a). Administrative offset under 31 U.S.C. 3716 may not be used to collect debts more than 10 years after the Federal Government’s right to collect the debt first accrued, except as otherwise provided by law. In addition, administrative offset may not be used when a statute explicitly prohibits its use to collect the claim or type of claim involved.

(c) Unless otherwise provided, debts or payments not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under common law, or any other applicable statutory authority.

§ 1208.42 Administrative offset prior to completion of procedures.

FHFA shall not be required to follow the procedures described in §1208.43 where:

(a) Prior to the completion of the procedures described in §1208.43, FHFA may effect administrative offset if failure to offset would substantially prejudice its ability to collect the debt, and if the time before the payment is to be made does not reasonably permit completion of the procedures described in §1208.43. Such prior administrative offset shall be followed promptly by the completion of the procedures described in §1208.43. Amounts recovered by administrative offset but later found not to be owed to FHFA shall be promptly refunded. This section applies only to administrative offset pursuant to 31 CFR 901.3(b)(1).

(b) The administrative offset is in the nature of a recoupment (i.e., FHFA may offset a payment due to the debtor when both the payment due to the debtor and the debt owed to FHFA arose from the same transaction); or

(c) In the case of non-centralized administrative offsets, FHFA first learns of the existence of a debt due when there would be insufficient time to afford the debtor due process under these procedures before the paying agency makes payment to the debtor; in such cases, the Director shall give the debtor notice and an opportunity for review as soon as practical and shall refund any money ultimately found not to be due to the Federal Government.

§ 1208.43 Procedures.

Unless the procedures described in §1208.42 are used, prior to collecting any debt by administrative offset or referring such claim to another agency for collection through administrative offset, FHFA shall provide the debtor with the following:

(a) Written notification of the nature and amount of the debt, the intention...
§ 1208.48 Requests for administrative offset from other Federal agencies.

(a) Any agency may request that funds due and payable to a debtor by FHFA be administratively offset in order to collect a debt owed to such agency by the debtor.

(b) FHFA shall initiate the requested administrative offset only upon:

(1) Receipt of written certification from the creditor agency that:
   (i) The debtor owes the debt, including the amount and basis of the debt;
   (ii) The agency has prescribed regulations for the exercise of administrative offset; and

   (c) An opportunity for review within FHFA of the determination of indebtedness. Any request for review by the debtor shall be in writing and shall be submitted to FHFA within 30 calendar days of the date of the notice of the offset. FHFA may waive the time limits for requesting review for good cause shown by the debtor. FHFA shall provide the debtor with a reasonable opportunity for an oral hearing when:

   (1) An applicable statute authorizes or requires FHFA to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

   (2) The debtor requests reconsideration of the debt and FHFA determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, as for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this subpart C is not required to be a formal evidentiary hearing, although FHFA shall document all significant matters discussed at the hearing. In those cases where an oral hearing is not required by this subpart C, FHFA shall make its determination on the request for waiver or reconsideration based upon a review of the written record; and

   (d) An opportunity to enter into a written agreement for the voluntary repayment of the amount of the claim at the discretion of FHFA.

§ 1208.47 Requests for administrative offset to other Federal agencies.

(a) FHFA may request that a debt owed to FHFA be collected by administrative offset against funds due and payable to a debtor by another agency.

(b) In requesting administrative offset, FHFA, as creditor, shall certify in writing to the agency holding funds of the debtor:

   (1) That the debtor owes the debt;
   (2) The amount and basis of the debt; and

   (3) That FHFA has complied with the requirements of its own administrative offset regulations and the applicable provisions of the FCCS with respect to providing the debtor with due process, unless otherwise provided.

§ 1208.46 No requirement for duplicate notice.

Where FHFA has previously given a debtor any of the required notice and review opportunities with respect to a particular debt, FHFA is not required to duplicate such notice and review opportunities prior to initiating administrative offset.

§ 1208.45 Refunds.

FHFA shall refund promptly those amounts recovered by administrative offset but later found not to be owed to the Federal Government. Unless required by law or contract, such refunds shall not bear interest.

§ 1208.44 Interest, penalties, and administrative costs.

FHFA shall assess interest, penalties, and administrative costs on debts owed to the Federal Government, in accordance with 31 U.S.C. 3717 and the FCCS. FHFA may also assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 and the FCCS to the extent authorized under the common law or other applicable statutory authority.
§ 1208.49 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Request for administrative offset. Unless otherwise prohibited by law, FHFA may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund (Fund) be offset administratively in reasonable amounts in order to collect in one full payment or in a minimal number of payments debt owed to FHFA by the debtor. Such requests shall be made to the appropriate officials of OPM in accordance with such regulations as may be prescribed by FHFA or OPM.

(b) Contents of certification. When making a request for administrative offset under paragraph (a) of this subpart, FHFA shall provide OPM with a written certification that:

(1) The debtor owes FHFA a debt, including the amount of the debt;
(2) FHFA has complied with the applicable statutes, regulations, and procedures of OPM; and
(3) FHFA has complied with the requirements of the FCCS, including any required hearing or review.

(c) If FHFA decides to request administrative offset under paragraph (a) of this subpart, it shall make the request as soon as practicable after completion of the applicable procedures. This will satisfy any requirement that administrative offset be initiated prior to the expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least one year has elapsed since the administrative offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of administrative offset if he or she establishes that changed financial circumstances would render the administrative offset unjust.

(d) If FHFA collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, FHFA shall act promptly to modify or terminate its request for administrative offset under paragraph (a) of this section.

Subpart D—Tax Refund Offset

§ 1208.50 Authority and scope.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed the Federal Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due. In addition, FHFA is authorized to collect debts by means of administrative offset under 31 U.S.C. 3716 and, as part of the debt collection process, to notify the United States Department of Treasury’s Financial Management Service of the amount of such debt for collection by tax refund offset.

§ 1208.51 Definitions.

The following terms apply to this subpart D—

Debt or claim means an amount of money, funds or property which has been determined by FHFA to be due to the Federal Government from any person, organization, or entity, except another Federal agency.

Debtor means a person who owes a debt or a claim. The term “person” includes any individual, organization or entity, except another Federal agency.
Dispute means a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or in the case of a debt reduced to judgment, that the judgment has been satisfied or stayed.

Notice means the information sent to the debtor pursuant to §1208.53. The date of the notice is that date shown on the notice letter as its date of issuance.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the Internal Revenue Service (IRS) makes the appropriate credits.

§ 1208.52 Procedures.

(a) Referral to the Department of the Treasury. (1) FHFA may refer any past due, legally enforceable nonjudgment debt of an individual, organization, or entity to the Department of the Treasury for tax refund offset if FHFA’s or the referring agency’s rights of action accrued more than three months but less than 10 years before the offset is made.

(2) Debts reduced to judgment may be referred at any time.

(3) Debts in amounts lower than $25 are not subject to referral.

(4) In the event that more than one debt is owed, the tax refund offset procedures shall be applied in the order in which the debts became past due.

(5) FHFA shall notify the Department of the Treasury of any change in the amount due promptly after receipt of payment or notice of other reduction.

(b) Notice. FHFA shall provide the debtor with written notice of its intent to offset before initiating the offset. Notice shall be mailed to the debtor at the current address of the debtor, as determined from information obtained from the Internal Revenue Service pursuant to 26 U.S.C. 6103(m)(2), (4), (5) or maintained by FHFA. The notice sent to the debtor shall state the amount of the debt and inform the debtor that:

(1) The debt is past due;

(2) FHFA intends to refer the debt to the Department of the Treasury for offset from tax refunds that may be due to the taxpayer;

(3) FHFA intends to provide information concerning the delinquent debt exceeding $100 to a consumer reporting bureau unless such debt has already been disclosed; and

(4) Before the debt is reported to a consumer reporting agency, if applicable, and referred to the Department of the Treasury for offset from tax refunds, the debtor has 65 calendar days from the date of notice to request a review under paragraph (d) of this section.

(c) Report to consumer reporting agency. If the debtor neither pays the amount due nor presents evidence that the amount is not past due or is satisfied or stayed, FHFA will report the debt to a consumer reporting agency at the end of the notice period, if applicable, and refer the debt to the Department of the Treasury for offset from the taxpayer’s Federal tax refund. FHFA shall certify to the Department of the Treasury that reasonable efforts have been made by FHFA to obtain payment of such debt.

(d) Request for review. A debtor may request a review by FHFA if he or she believes that all or part of the debt is not past due or is not legally enforceable, or in the case of a judgment debt, has been satisfied or stayed, as follows:

(1) The debtor must send a written request for review to FHFA at the address provided in the notice.

(2) The request must state the amount disputed and reasons why the debtor believes that the debt is not past due, is not legally enforceable, has been satisfied, or if a judgment debt, has been satisfied or stayed.

(3) The request must include any documents that the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) If the debtor wishes to inspect records establishing the nature and amount of the debt, the debtor must
§ 1208.53 Make a written request to FHFA for an opportunity for such an inspection. The office holding the relevant records not exempt from disclosure shall make them available for inspection during normal business hours within one week from the date of receipt of the request.

(5) The request for review and any additional information submitted pursuant to the request must be received by FHFA at the address stated in the notice within 65 calendar days of the date of issuance of the notice.

(6) In reaching its decision, FHFA shall review the dispute and shall consider its records and any documentation and arguments submitted by the debtor. FHFA shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(7) If the evidence presented by the debtor is considered by a non-FHFA agent or other entities or persons acting on behalf of FHFA, the debtor shall be accorded at least 30 calendar days from the date the agent or other entity or person determines that all or part of the debt is past due and legally enforceable to request review by FHFA of any unresolved dispute.

(8) Any debt that previously has been reviewed pursuant to this section or any other section of this part, or that has been reduced to a judgment, may not be disputed except on the grounds of payments made or events occurring subsequent to the previous review or judgment.

(9) To the extent that a debt owed has not been established by judicial or administrative order, a debtor may dispute the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, FHFA review will be limited to issues concerning the payment or other discharge of the debt.

§ 1208.53 No requirement for duplicate notice.

Where FHFA has previously given a debtor any of the required notice and review opportunities with respect to a particular debt, FHFA is not required to duplicate such notice and review opportunities prior to initiating tax refund offset.

§ 1208.54 Scope and purpose.

These administrative wage garnishment procedures are issued in compliance with 31 U.S.C. 3720D and 31 CFR 285.11(f). This subpart E provides procedures for FHFA to collect money from a debtor’s disposable pay by means of administrative wage garnishment. The receipt of payments pursuant to this subpart E does not preclude FHFA from pursuing other debt collection remedies, including the offset of Federal payments. FHFA may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment. This subpart E does not apply to the collection of delinquent debts from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

§ 1208.61 Notice.

At least 30 days before the initiation of garnishment proceedings, FHFA will send, by first class mail to the debtor’s last known address, a written notice informing the debtor of:

(a) The nature and amount of the debt;

(b) FHFA’s intention to initiate proceedings to collect the debt through deductions from the debtor’s pay until the debt and all accumulated interest penalties and administrative costs are paid in full;

(c) An explanation of the debtor’s rights as set forth in §1208.62(c); and

(d) The time frame within which the debtor may exercise these rights. FHFA shall retain a stamped copy of the notice indicating the date the notice was mailed.

§ 1208.62 Debtor’s rights.

FHFA shall afford the debtor the opportunity:

(a) To inspect and copy records related to the debt:
(b) To enter into a written repayment agreement with FHFA, under terms agreeable to FHFA;

(c) To the extent that a debt owed has not been established by judicial or administrative order, to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement.

§ 1208.63 Form of hearing.

(a) If the debtor submits a timely written request for a hearing as provided in §1208.62(c), FHFA will afford the debtor a hearing, which at FHFA’s option may be oral or written. FHFA will provide the debtor with a reasonable opportunity for an oral hearing when FHFA determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(b) If FHFA determines that an oral hearing is appropriate, the time and location of the hearing shall be established by FHFA. An oral hearing may, at the debtor’s option, be conducted either in person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(c) In cases when it is determined that an oral hearing is not required by this section, FHFA will accord the debtor a “paper hearing,” that is, FHFA will decide the issues in dispute based upon a review of the written record.

§ 1208.64 Effect of timely request.

If FHFA receives a debtor’s written request for a hearing within 15 business days of the date FHFA mailed its notice of intent to seek garnishment, FHFA shall not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with §1208.68 and §1208.69 has been rendered.

§ 1208.65 Failure to timely request a hearing.

If FHFA receives a debtor’s written request for a hearing after 15 business days of the date FHFA mailed its notice of intent to seek garnishment, FHFA shall provide a hearing to the debtor. However, FHFA will not delay issuance of a withholding order unless it determines that the untimely filing of the request was caused by factors over which the debtor had no control, or FHFA receives information that FHFA believes justifies a delay or cancellation of the withholding order.

§ 1208.66 Hearing official.

A hearing official may be any qualified individual, as determined by FHFA, including an administrative law judge.

§ 1208.67 Procedure.

After the debtor requests a hearing, the hearing official shall notify the debtor of:

(a) The date and time of a telephonic hearing;

(b) The date, time, and location of an in-person oral hearing; or

(c) The deadline for the submission of evidence for a written hearing.

§ 1208.68 Format of hearing.

FHFA will have the burden of proof to establish the existence or amount of the debt. Thereafter, if the debtor disputes the existence or amount of the debt, or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law. The hearing official shall maintain a record of any hearing held under this section. Hearings are not required to be formal, and evidence may be offered without regard to formal rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation.
§ 1208.69 Date of decision.

The hearing official shall issue a written opinion stating his or her decision as soon as practicable, but not later than 60 days after the date on which the request for such hearing was received by FHFA. If FHFA is unable to provide the debtor with a hearing and decision within 60 days after the receipt of the request for such hearing:

(a) FHFA may not issue a withholding order until the hearing is held and a decision rendered; or

(b) If FHFA had previously issued a withholding order to the debtor’s employer, the withholding order will be suspended beginning on the 61st day after the date FHFA received the hearing request and continuing until a hearing is held and a decision is rendered.

§ 1208.70 Content of decision.

The written decision shall include:

(a) A summary of the facts presented;

(b) The hearing official’s findings, analysis and conclusions; and

(c) The terms of any repayment schedule, if applicable.

§ 1208.71 Finality of agency action.

A decision by a hearing official shall become the final decision of FHFA for the purpose of judicial review under the Administrative Procedure Act.

§ 1208.72 Failure to appear.

In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

§ 1208.73 Wage garnishment order.

(a) Unless FHFA receives information that it believes justifies a delay or cancellation of the withholding order, FHFA will send by first class mail a withholding order to the debtor’s employer within 30 calendar days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice of FHFA’s intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 calendar days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on FHFA’s letterhead, and signed by the head of the agency or delegate. The order will contain all information necessary for the employer to comply with the withholding order, including the debtor’s name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) FHFA will keep a stamped copy of the order indicating the date it was mailed.

§ 1208.74 Certification by employer.

Along with the withholding order, FHFA will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to FHFA within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor’s employment status and disposable pay available for withholding.

§ 1208.75 Amounts withheld.

(a) Upon receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraphs (b) through (d) of this section.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15 percent of the debtor’s disposable pay; or

(2) The amount set forth at 15 U.S.C. 1673(a)(2). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which the debtor’s disposable pay exceeds an amount equivalent to thirty times the minimum wage.

(c) When a debtor’s pay is subject to withholding orders with priority, the following shall apply:

(1) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (b) of this section and shall have priority over other withholding orders which
§ 1208.76 Exclusions from garnishment.

FHFA will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing FHFA of the circumstances surrounding an involuntary separation from employment.

§ 1208.77 Financial hardship.

(a) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by FHFA of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(c) If a financial hardship is found, FHFA will downwardly adjust, by an amount and for a period of time agreeable to FHFA, the amount garnished to reflect the debtor’s financial condition. FHFA will notify the employer of any adjustments to the amounts to be withheld.

§ 1208.78 Ending garnishment.

(a) Once FHFA has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the Federal Claims Collection Standards, FHFA will send the debtor’s employer notification to discontinue wage withholding.

(b) At least annually, FHFA will review its debtors’ accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 1208.79 Prohibited actions by employer.

The Debt Collection Improvement Act of 1996 prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this subpart E.
§ 1208.80  Refunds.

(a) If a hearing official determines that a debt is not legally due and owing to the United States, FHFA shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this section shall not bear interest.

§ 1208.81  Right of action.

FHFA may sue any employer for any amount that the employer fails to withhold from wages owed and payable to its employee in accordance with this subpart E. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this subpart E, “termination of the collection action” occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if FHFA has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

PART 1209—RULES OF PRACTICE AND PROCEDURE

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Source: 76 FR 53607, Aug. 26, 2011, unless otherwise noted.

Subpart A—Scope and Authority

§ 1209.1 Scope.

(a) Authority. This part sets forth the Rules of Practice and Procedure for hearings on the record in administrative enforcement proceedings in accordance with 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, sections 1301 et seq., codified at 12 U.S.C. 4501 et seq., as amended (the “Safety and Soundness Act”), as stated in §1209.4 of this part.1

(b) Enforcement Proceedings. Subpart B of this part (Enforcement Proceedings Under sections 1371 through 1379D of the Safety and Soundness Act) sets forth the statutory authority for enforcement proceedings under sections 1371 through 1379D of the Safety and Soundness Act (12 U.S.C. 4631 through 4641) (Enforcement Proceedings).

(c) Rules of Practice and Procedure. Subpart C of this part (Rules of Practice and Procedure) prescribes the general rules of practice and procedure applicable to adjudicatory proceedings that the Director is required by statute to conduct on the record after opportunity for a hearing under the Administrative Procedure Act, 5 U.S.C. 554, 556, and 557, under the following statutory provisions:

(1) Enforcement proceedings under sections 1371 through 1379D of the Safety and Soundness Act, as amended (12 U.S.C. 4631 through 4641);

(2) Removal, prohibition, and civil money penalty proceedings for violations of post-employment restrictions imposed by applicable law;

(3) Proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a) to assess civil money penalties; and

(4) Enforcement proceedings under sections 1341 through 1348 of the Safety and Soundness Act, as amended (12 U.S.C. 4581 through 4588), and section 10C of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1430c), except where the Rules of Practice and Procedure in Subpart C are inconsistent with such statutory provisions, in which case the statutory provisions shall apply.

(d) Representation and conduct. Subpart D of this part (Parties and Representational Practice before the Federal Housing Finance Agency; Standards of Conduct) sets out the rules of representation and conduct that shall govern any appearance by any person, party, or representative of any person or party, before a presiding officer, the Director of FHFA, or a designated representative of the Director or FHFA staff, in any proceeding or matter pending before the Director.

(e) Civil money penalty inflation adjustments. Subpart E of this part (Civil Money Penalty Inflation Adjustments) sets out the requirements for the periodic adjustment of maximum civil money penalty amounts under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation

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§ 1209.2 Rules of construction.

For purposes of this part:

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party’s representative of record, if any, on behalf of that party, may take any action required to be taken by the party.

§ 1209.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary:

Adjudicatory proceeding means a proceeding conducted pursuant to these rules, on the record, and leading to the formulation of a final order other than a regulation.

Agency has the meaning defined in section 1303(2) of the Safety and Soundness Act (12 U.S.C. 4502(2)).

Associated with the regulated entity means, for purposes of section 1379 of the Safety and Soundness Act (12 U.S.C. 4637), any direct or indirect involvement or participation in the conduct of operations or business affairs of a regulated entity, including engaging in activities related to the operations or management of, providing advice or services to, consulting or contracting with, serving as agent for, or in any other way affecting the operations or business affairs of a regulated entity—with or without regard to—any direct or indirect payment, promise to make payment, or receipt of any compensation or thing of value, such as money, notes, stock, stock options, or other securities, or other benefit or remuneration of any kind, by or on behalf of the regulated entity, except any payment made pursuant to a retirement plan or deferred compensation plan, which is determined by the Director to be permissible under section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)), or by reason of the death or disability of the party, in the form and manner commonly paid or provided to retirees of the regulated entity, unless such payment, compensation, or such benefit is promised or provided to or for the benefit of said party for the provision of services or other benefit to the regulated entity.

Authorizing statutes has the meaning defined in section 1303(3) of the Safety and Soundness Act (12 U.S.C. 4502(3)).


Board or Board of Directors means the board of directors of any Enterprise or Federal Home Loan Bank (Bank), as provided for in the respective authorizing statutes.

Decisional employee means any member of the Director’s or the presiding officer’s staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Director or the presiding officer, respectively, in preparing orders, recommended decisions, decisions, and other documents under subpart C of this part.

Director has the meaning defined in section 1303(9) of the Safety and Soundness Act (12 U.S.C. 4502(9)); except, as the context requires in this part, “director” may refer to a member of the Board of Directors or any Board committee of an Enterprise, a Federal Home Loan Bank, or the Office of Finance.

Enterprise has the meaning defined in section 1303(10) of the Safety and Soundness Act (12 U.S.C. 4502(10)).
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§ 1209.5 Cease and desist proceedings.

(a) Cease and desist proceedings—(1) Authority—(i) In general. As prescribed by section 1371(a) of the Safety and Soundness Act (12 U.S.C. 4631(a)), if in the opinion of the Director, a regulated entity or any entity-affiliated party is who has filed a notice of appearance and otherwise has complied with the requirements under §1209.72. FHFA’s representative of record may be referred to as FHFA counsel of record, agency counsel or enforcement counsel.

Respondent means any party that is the subject of a notice of charges under this part.


Violation has the meaning defined in section 1303(25) of the Safety and Soundness Act (12 U.S.C. 4502(25)).

Subpart B—Enforcement Proceedings Under Sections 1371 Through 1379D of the Safety and Soundness Act

§ 1209.4 Scope and authority.

The rules of practice and procedure set forth in Subpart C (Rules of Practice and Procedure) of this part shall be applicable to any hearing on the record conducted by FHFA in accordance with sections 1371 through 1379D of the Safety and Soundness Act (12 U.S.C. 4631 through 4641), as follows:

(a) Cease-and-desist proceedings under sections 1371 and 1373 of the Safety and Soundness Act (12 U.S.C. 4631, 4633); and

(b) Civil money penalty assessment proceedings under sections 1373 and 1376 of the Safety and Soundness Act, (12 U.S.C. 4633, 4636); and

(c) Removal and prohibition proceedings under sections 1373 and 1377 of the Safety and Soundness Act, (12 U.S.C. 4633, 4636a), except removal proceedings under section 1377(h) of the Safety and Soundness Act, (12 U.S.C. 4636(a(h)).

§ 1209.5 Cease and desist proceedings.

(a) Cease and desist proceedings—(1) Authority—(i) In general. As prescribed by section 1371(a) of the Safety and Soundness Act (12 U.S.C. 4631(a)), if in the opinion of the Director, a regulated entity or any entity-affiliated party is

(b) Civil money penalty assessment proceedings under sections 1373 and 1376 of the Safety and Soundness Act, (12 U.S.C. 4633, 4636); and

(c) Removal and prohibition proceedings under sections 1373 and 1377 of the Safety and Soundness Act, (12 U.S.C. 4633, 4636a), except removal proceedings under section 1377(h) of the Safety and Soundness Act, (12 U.S.C. 4636a(h)).
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engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges (as described in §1209.23) to institute cease and desist proceedings, except with regard to the enforcement of any housing goal that must be addressed under sections 1341 and 1345 of the Safety and Soundness Act (12 U.S.C. 4581, 4585).

(ii) Hearing on the record. In accordance with section 1373 of the Safety and Soundness Act (12 U.S.C. 4633), a hearing on the record shall be held in the District of Columbia. Subpart C of this part shall govern the hearing procedures.

(iii) Consent to order. Unless the party served with a notice of charges shall appear at the hearing personally or through an authorized representative of record, the party shall be deemed to have consented to the issuance of the cease and desist order.

(2) Unsatisfactory rating. In accordance with section 1371(b) of the Safety and Soundness Act (12 U.S.C. 4631(b)), if a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may deem the regulated entity to be engaging in an unsafe or unsound practice within the meaning of section 1371(a) of the Safety and Soundness Act (12 U.S.C. 4631(a)), if any such deficiency has not been corrected.

(3) Order. As provided by section 1371(c)(2) of the Safety and Soundness Act (12 U.S.C. 4631(c)(2)), if the Director finds on the record made at a hearing in accordance with section 1373 of the Safety and Soundness Act (12 U.S.C. 4633) that any practice or violation specified in the notice of charges has been established (or the regulated entity or entity-affiliated party consents pursuant to section 1373(a)(4) of the Safety and Soundness Act (12 U.S.C. 4633(a)(4)), the Director may issue and serve upon the regulated entity, executive officer, director, or entity-affiliated party, an order (as set forth in §1209.55) requiring such party to cease and desist from any such practice or violation and to take affirmative action to correct or remedy the conditions resulting from any such practice or violation.

(b) Affirmative action to correct conditions resulting from violations or activities. The authority to issue a cease and desist order or a temporary cease and desist order requiring a regulated entity, executive officer, director, or entity-affiliated party to take affirmative action to correct or remedy any condition resulting from any practice or violation with respect to which such cease and desist order or temporary cease and desist order is set forth in section 1371(a), (c)(2), and (d) of the Safety and Soundness Act (12 U.S.C. 4631(a), (c)(2), and (d)), and includes the authority to:

(1) Require the regulated entity or entity-affiliated party to make restitution, or to provide reimbursement, indemnification, or guarantee against loss, if—

(i) Such entity or party or finance facility was unjustly enriched in connection with such practice or violation, or

(ii) The violation or practice involved a reckless disregard for the law or any applicable regulations, or prior order of the Director;

(2) Require the regulated entity to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss; as

(3) Restrict asset or liability growth of the regulated entity;

(4) Require the regulated entity to obtain new capital;

(5) Require the regulated entity to dispose of any loan or asset involved;

(6) Require the regulated entity to rescind agreements or contracts;

(7) Require the regulated entity to employ qualified officers or employees (who may be subject to approval by the
Director at the direction of the Director; and
(8) Require the regulated entity to take such other action, as the Director determines appropriate, including limiting activities.

(c) Authority to limit activities. As provided by section 1371(e) of the Safety and Soundness Act (12 U.S.C. 4631(e)), the authority of the Director to issue a cease and desist order under section 1371 of the Safety and Soundness Act (12 U.S.C. 4631) or a temporary cease and desist order under section 1372 of the Safety and Soundness Act (12 U.S.C. 4632), includes the authority to place limitations on the activities or functions of the regulated entity or entity-affiliated party or any executive officer or director of the regulated entity or entity-affiliated party.

(d) Effective date of order; judicial review—(1) Effective date. The effective date of an order is as set forth in section 1371(f) of the Safety and Soundness Act (12 U.S.C. 4631(f)).

§ 1209.6 Temporary cease and desist orders.

(a) Temporary cease and desist orders—(1) Grounds for issuance. The grounds for issuance of a temporary cease and desist order are set forth in section 1372(a) of the Safety and Soundness Act (12 U.S.C. 4632(a)). In accordance with section 1372(a) of the Safety and Soundness Act (12 U.S.C. 4632(a)), the Director may:
(i) Issue a temporary order requiring that regulated entity or entity-affiliated party to cease and desist from any violation or practice specified in the notice of charges; and
(ii) Require that regulated entity or entity-affiliated party to take affirmative action to prevent or remedy any insolvency, dissipation, condition, or prejudice, pending completion of the proceedings.
(2) Additional requirements. As provided by section 1372(a)(2) of the Safety and Soundness Act (12 U.S.C. 4632(a)(2)), an order issued under section 1372(a)(1) of the Safety and Soundness Act (12 U.S.C. 4632(a)(1)) may include any requirement authorized under section 1371(d) of the Safety and Soundness Act (12 U.S.C. 4631(d)).

(b) Effective date of temporary order. The effective date of a temporary order is as provided by section 1372(b) of the Safety and Soundness Act (12 U.S.C. 4632(b)). And, unless set aside, limited, or suspended by a court in proceedings pursuant to the judicial review provisions of section 1372(d) of the Safety and Soundness Act (12 U.S.C. 4632(d)), shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice of charges, and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 1371 of the Safety and Soundness Act (12 U.S.C. 4631).

(c) Incomplete or inaccurate records—(1) Temporary order. As provided by section 1372(c) of the Safety and Soundness Act (12 U.S.C. 4632(c)), if a notice of charges served under section 1371(a) or (b) of the Safety and Soundness Act (12 U.S.C. 4631(a), (b)), specifies on the basis of particular facts and circumstances that the books and records of the regulated entity served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the regulated entity or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that regulated entity, the Director may issue a temporary order requiring:
(i) The cessation of any activity or practice that gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or
(ii) Affirmative action to restore the books or records to a complete and accurate state.
(2) Effective period. Any temporary order issued under section 1372(c)(1) of the Safety and Soundness Act (12 U.S.C. 4632(c)(1)) shall become effective upon service, and remain in effect and enforceable unless set aside, limited, or suspended in accordance with section 1372(d) of the Safety and Soundness Act.
§ 1209.7 Civil money penalties.

(a) Civil money penalty proceedings—(1) In general. Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) governs the imposition of civil money penalties. Upon written notice, which shall conform to the requirements of §1209.23 of this part, and a hearing on the record to be conducted in accordance with subpart C of this part, the Director may impose a civil money penalty on any regulated entity or any entity-affiliated party as provided by section 1376 of the Safety and Soundness Act for any violation, practice, or breach addressed under sections 1371, 1372, or 1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, 4636), except with regard to the enforcement of housing goals that are addressed separately under sections 1341 and 1345 of the Safety and Soundness Act (12 U.S.C. 4581, 4585).

(2) Amount of penalty—(i) First Tier. Section 1376(b)(1) of the Safety and Soundness Act (12 U.S.C. 4636(b)(1)) prescribes the civil penalty for violations as stated therein, in the amount of $10,000 for each day during which a violation continues.

(ii) Second Tier. Section 1376(b)(2) of the Safety and Soundness Act (12 U.S.C. 4636(b)(2)) provides that notwithstanding paragraph (b)(1) thereof, a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for each day during which a violation, practice, or breach continues, if the regulated entity or entity-affiliated party commits any violation described in (b)(1) thereof, recklessly engages in an unsafe or unsound practice, or breaches any fiduciary duty, and the violation, practice, or breach is part of a pattern of misconduct; causes or is likely to cause more than a minimal loss to the regulated entity; or results in pecuniary gain or other benefit to such party.

(iii) Third Tier. Section 1376(b)(3) of the Safety and Soundness Act (12 U.S.C. 4636(b)(3)) provides that, notwithstanding paragraphs (b)(1) and (b)(2) thereof, any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty, in accordance with section 1376(b)(4) of the Safety and Soundness Act (12 U.S.C. 4636(b)(4)), for each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party:

(A) Knowingly—

(1) Commits any violation described in any subparagraph of section 1376(b)(1) of the Safety and Soundness Act;

(2) Engages in any unsafe or unsound practice in conducting the affairs of the regulated entity;

(3) Breaches any fiduciary duty; and

(B) Knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

(b) Maximum amounts—(1) Maximum daily penalty. Section 1376(b)(4) of the Safety and Soundness Act (12 U.S.C. 4636(b)(4)) provides that, notwithstanding paragraph (b)(1), a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty for each day during which a violation, practice, or breach continues, if such regulated entity or entity-affiliated party:

(A) Knowingly—

(1) Commits any violation described in any subparagraph of section 1376(b)(1) of the Safety and Soundness Act;

(2) Engages in any unsafe or unsound practice in conducting the affairs of the regulated entity;

(3) Breaches any fiduciary duty; and

(B) Knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.
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4636(b)(4)), prescribes the maximum daily amount of a civil penalty that may be assessed for any violation, practice, or breach pursuant to section 1376(b)(3) of the Safety and Soundness Act (12 U.S.C. 4636(b)(3)), in the case of any entity-affiliated party (not to exceed $2,000,000.00), and in the case of any regulated entity ($2,000,000.00).

(2) Inflation Adjustment Act. The maximum civil penalty amounts are subject to periodic adjustment under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), as provided in subpart E of this part.

(c) Factors in determining amount of penalty. In accordance with section 1376(c)(2) of the Safety and Soundness Act (12 U.S.C. 4636(c)(2)), in assessing civil money penalties on a regulated entity or an entity-affiliated party in amounts as provided in section 1376(b) of the Safety and Soundness Act (12 U.S.C. 4636(b)), the Director shall give consideration to such factors as:

(1) The gravity of the violation, practice, or breach;
(2) Any history of prior violations or supervisory actions, or any attempts at concealment;
(3) The effect of the penalty on the safety and soundness of the regulated entity or the Office of Finance;
(4) Any loss or risk of loss to the regulated entity or to the Office of Finance;
(5) Any benefits received or derived, whether directly or indirectly, by the respondent(s);
(6) Any injury to the public;
(7) Any deterrent effect on future violations, practices, or breaches;
(8) The financial capacity of the respondent(s), or any unusual circumstance(s) of hardship upon an executive officer, director, or other individual;
(9) The promptness, cost, and effectiveness of any effort to remedy or ameliorate the consequences of the violation, practice, or breach;
(10) The candor and cooperation, if any, of the respondent(s); and
(11) Any other factors the Director may determine by regulation to be appropriate.


§ 1209.8 Removal and prohibition proceedings.

(a) Removal and prohibition proceedings—(1) Authority to issue order. As provided by section 1377(a)(1) of the Safety and Soundness Act (12 U.S.C. 4636a(a)(1)), the Director may serve upon a party described in paragraph (a)(2) of this section, or any officer, director, or management of the Office of Finance, a notice of the intention of the Director to suspend or remove such party from office, or to prohibit any further participation by such party in any manner in the conduct of the affairs of the regulated entity or the Office of Finance.

(2) Applicability. As provided by section 1377(a)(2) of the Safety and Soundness Act (12 U.S.C. 4636a(a)(2)), a party described in this paragraph is an entity-affiliated party or any officer, director, or management of the Office of Finance, if the Director determines that:

(i) That party, officer, or director has, directly or indirectly—
(A) Violated—
(1) Any law or regulation;
(2) Any cease and desist order that has become final;
(3) Any condition imposed in writing by the Director in connection with an application, notice, or other request by a regulated entity; or
(4) Any written agreement between such regulated entity and the Director;
(B) Engaged or participated in any unsafe or unsound practice in connection with any regulated entity or business institution; or
(C) Committed or engaged in any act, omission, or practice which constitutes a breach of such party’s fiduciary duty;
(ii) By reason of such violation, practice, or breach—
(A) Such regulated entity or business institution has suffered or likely will suffer financial loss or other damage; or
(B) Such party directly or indirectly received financial gain or other benefit; and
(iii) The violation, practice, or breach described in subparagraph (i) of this section—
(A) Involves personal dishonesty on the part of such party; or
(B) Demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity or business institution.

(3) Applicability to business entities. Under section 1377(f) of the Safety and Soundness Act (12 U.S.C. 4636a(f)), this remedy applies only to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

(b) Suspension order—(1) Suspension or prohibition authorized. If the Director serves written notice under section 1377(a) of the Safety and Soundness Act (12 U.S.C. 4636a(a)), upon a party subject to that section, the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity or the Office of Finance, if the Director:
(i) Determines that such action is necessary for the protection of the regulated entity or the Office of Finance; and
(ii) Serves such party with written notice of the order.
(2) Effective period. The effective period of any order under section 1377(b)(1) of the Safety and Soundness Act (12 U.S.C. 4636a(b)(1)) is specified in section 1377(b)(2) of the Safety and Soundness Act (12 U.S.C. 4636a(b)(2)). An order of suspension shall become effective upon service and, absent a court-ordered stay, remains effective and enforceable until the date the Director dismisses the charges or the effective date of an order issued by the Director under section 1377(c)(4) of the Safety and Soundness Act (12 U.S.C. 4636a(c)(4)), (5).
(3) Copy of order to be served on regulated entity. In accordance with section 1377(b)(3) of the Safety and Soundness Act (12 U.S.C. 4636a(b)(3)), the Director will serve a copy of any order to suspend, remove, or prohibit participation in the conduct of the affairs on the Office of Finance or any regulated entity with which such party is affiliated at the time such order is issued.

(c) Notice; hearing and order—(1) Written notice. A notice of the intention of the Director to issue an order under sections 1377(a) and (c) of the Safety and Soundness Act, (12 U.S.C. 4636a(a), (c)), shall conform with §1209.23, and may include any such additional information as the Director may require.

(2) Hearing. A hearing on the record shall be held in the District of Columbia in accordance with sections 1373(a)(1) and 1377(c)(2) of the Safety and Soundness Act. See 12 U.S.C. 4633(a)(1), 4636a(c)(2).

(3) Consent. As provided by section 1377(c)(3) of the Safety and Soundness Act (12 U.S.C. 4636a(c)(3)), unless the party that is the subject of a notice delivered under paragraph (a) of this section appears in person or by a duly authorized representative of record, in the adjudicatory proceeding, such party shall be deemed to have consented to the issuance of an order under this section.

(4) Issuance of order of suspension or removal. As provided by section 1377(c)(4) of the Safety and Soundness Act (12 U.S.C. 4636a(c)(4)), the Director may issue an order under this part, as the Director may deem appropriate, if:
(i) A party is deemed to have consented to the issuance of an order under paragraph (d); or
(ii) Upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

(5) Effectiveness of order. As provided by section 1377(c)(5) of the Safety and Soundness Act (12 U.S.C. 4636a(c)(5)), any order issued and served upon a party in accordance with this section shall become effective at the expiration of 30 days after the date of service upon such party and any regulated entity or entity-affiliated party. An order issued upon consent under paragraph (c)(3) of this section, however, shall become effective at the time specified therein. Any such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

(d) Prohibition of certain activities and industry-wide prohibition—(1) Prohibition
of certain activities. As provided by section 1377(d) of the Safety and Soundness Act (12 U.S.C. 4636a(d)), any person subject to an order issued under subpart B of this part shall not—

(i) Participate in any manner in the conduct of the affairs of any regulated entity or the Office of Finance;

(ii) Solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

(iii) Violate any voting agreement previously approved by the Director; or

(iv) Vote for a director, or serve or act as an entity-affiliated party of a regulated entity or as an officer or director of the Office of Finance.

(2) Industry-wide prohibition. As provided by section 1377(e)(1) of the Safety and Soundness Act (12 U.S.C. 4636a(e)(1)), except as provided in section 1377(e)(2) of the Safety and Soundness Act (12 U.S.C. 4636a(e)(2)), any person who, pursuant to an order issued under section 1377 of the Safety and Soundness Act (12 U.S.C. 4636a), has been removed or suspended from office in a regulated entity or the Office of Finance, or prohibited from participating in the conduct of the affairs of a regulated entity or the Office of Finance, may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity or the Office of Finance.

(3) Relief from industry-wide prohibition at the discretion of the Director—(i) Relief from order. As provided by section 1377(e)(2) of the Safety and Soundness Act (12 U.S.C. 4636a(e)(2)), if, on or after the date on which an order has been issued under section 1377 of the Safety and Soundness Act (12 U.S.C. 4636a), that removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of a regulated entity or the Office of Finance, such party receives the written consent of the Director, the order shall cease to apply to such party with respect to the regulated entity or the Office of Finance to the extent described in the written consent. Such written consent shall be on such terms and conditions as the Director therein may specify in his discretion. Any such consent shall be publicly disclosed.

(ii) No private right of action; no final agency action. Nothing in this paragraph shall be construed to require the Director to entertain or to provide such written consent, or to confer any rights to such consideration or consent upon any party, regulated entity, entity-affiliated party, or the Office of Finance. Additionally, whether the Director consents to relief from an outstanding order under this part is committed wholly to the discretion of the Director, and such determination shall not be a final agency action for purposes of seeking judicial review.

(4) Violation of industry-wide prohibition. As provided by section 1377(e)(3) of the Safety and Soundness Act (12 U.S.C. 4636a(e)(3)), any violation of section 1377(e)(1) of the Safety and Soundness Act (12 U.S.C. 4636a(e)(1)) by any person who is subject to an order issued under section 1377(h) of the Safety and Soundness Act (12 U.S.C. 4636a(h)) (suspension or removal of entity-affiliated party charged with felony) shall be treated as a violation of the order.

(e) Stay of suspension or prohibition of entity-affiliated party. As provided by section 1377(g) of the Safety and Soundness Act (12 U.S.C. 4636a(g)), not later than 10 days after the date on which any entity-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a regulated entity, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension or prohibition pending the completion of the administrative enforcement proceeding pursuant to section 1377(c) of the Safety and Soundness Act (12 U.S.C. 4636a(c)). The court shall have jurisdiction to stay such suspension or prohibition, but such jurisdiction does not extend to the administrative enforcement proceeding.

§ 1209.9 Supervisory actions not affected.

As provided by section 1311(c) of the Safety and Soundness Act (12 U.S.C.
the authority of the Director to take action under subtitle A of the Safety and Soundness Act (12 U.S.C. 4611 et seq.) (e.g., the appointment of a conservator or receiver for a regulated entity; entering into a written agreement or pursuing an informal agreement with a regulated entity as the Director deems appropriate; and undertaking other such actions as may be applicable to undercapitalized, significantly undercapitalized or critically undercapitalized regulated entities), or to initiate enforcement proceedings under subtitle C of the Safety and Soundness Act (12 U.S.C. 4631 et seq.), shall not in any way limit the general supervisory or regulatory authority granted the Director under section 1311(b) of the Safety and Soundness Act (12 U.S.C. 4511(b)). The selection and form of regulatory or supervisory action under the Safety and Soundness Act is committed to the discretion of the Director, and the selection of one form of action or a combination of actions does not foreclose the Director from pursuing any other supervisory action authorized by law.

Subpart C—Rules of Practice and Procedure

§ 1209.10 Authority of the Director.

The Director may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of any act that could be done or ordered by the presiding officer.

§ 1209.11 Authority of the Presiding Officer.

(a) General rule. All proceedings governed by subpart C of this part shall be conducted consistent with the provisions of chapter 5 of title 5 of the United States Code. The presiding officer shall have complete charge of the adjudicatory proceeding, conduct a fair and impartial hearing, avoid unnecessary delay, and assure that a complete record of the proceeding is made.

(b) Powers. The presiding officer shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to:

(1) Control the proceedings. (i) Upon reasonable notice to the parties, not earlier than 30 days or later than 60 days after service of a notice of charges under the Safety and Soundness Act, set a date, time, and place for an evidentiary hearing on the record, within the District of Columbia, as provided in section 1373 of the Safety and Soundness Act (12 U.S.C. 4633), in a scheduling order that may be issued in conjunction with the initial scheduling conference set under § 1209.36, or otherwise as the presiding officer finds in the best interest of justice, in accordance with this part; and

(ii) Upon reasonable notice to the parties, reset or change the date, time, or place (within the District of Columbia) of an evidentiary hearing;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to address legal or factual issues, or evidentiary matters materially relevant to the charges or allowable defenses; to regulate the timing and scope of discovery and rule on discovery plans; or otherwise to consider matters that may facilitate an effective, fair, and expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue and enforce subpoenas, subpoenas duces tecum, discovery and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas issued by the presiding officer;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in an adjudicatory proceeding, except that only the Director shall have the power to grant summary disposition or any motion to dismiss the proceeding or to make a final determination of the merits of the proceeding;

(8) Take all actions authorized under this part to regulate the scope, timing, and completion of discovery of any non-privileged documents that are materially relevant to the charges or allowable defenses;

(9) Regulate the course of the hearing and the conduct of representatives and parties;
§ 1209.13 Good faith certification.

(a) General requirement. Every filing or submission of record following the issuance of a notice of charges by the Director shall be signed by at least one representative of record in his individual name and shall state that representative’s business contact information, which shall include his address, electronic mail address, and telephone number; and the names, addresses and telephone numbers of all other representatives of record for the person making the filing or submission.

(b) Effect of signature. (1) By signing a document, a representative of record or party appearing pro se certifies that:

(i) The representative of record or party has read the filing or submission of record;

(ii) To the best of his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal
of existing law, regulation, or FHFA order or policy; and

(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) Effect of making oral motion or argument. The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of his knowledge, information, and belief, formed after reasonable inquiry, his statements are well-grounded in fact and are warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation, or FHFA order or policy, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or to needlessly increase litigation-related costs.

§ 1209.14 Ex parte communications.

(a) Definition—(1) Ex parte communication means any material oral or written communication relevant to an adjudication of the merits of any proceeding under this subpart that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside FHFA (including the person’s representative of record); and

(ii) The presiding officer handling that proceeding, the Director, a decisional employee assigned to that proceeding, or any other person who is or may be reasonably expected to be involved in the decisional process.

(2) A communication that is procedural in that it does not concern the merits of an adjudicatory proceeding, such as a request for status of the proceeding, does not constitute an ex parte communication.

(b) Prohibition of ex parte communications. From the time a notice of charges commencing a proceeding under this part is issued by the Director until the date that the Director issues his final decision pursuant to §1209.55 of this part, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an ex parte communication with the Director or the presiding officer. The Director, presiding officer, or a decisional employee shall not knowingly make or cause to be made an ex parte communication.

(c) Procedure upon occurrence of ex parte communication. If an ex parte communication is received by any person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity within 10 days of receipt of service of the ex parte communication to file responses thereto, and to recommend sanctions that they believe to be appropriate under the circumstances, in accordance with paragraph (d) of this section.

(d) Sanctions. Any party or representative for a party who makes an ex parte communication, or who encourages or solicits another to make an ex parte communication, may be subject to any appropriate sanction or sanctions imposed by the Director or the presiding officer, including, but not limited to, exclusion from the proceedings, an adverse ruling on the issue that is the subject of the prohibited communication, or other appropriate and commensurate action(s).

(e) Consultations by presiding officer. Except to the extent required for the disposition of ex parte matters as authorized by law, the presiding officer may not consult a person or party on any matter relevant to the merits of the adjudication, unless upon notice to and opportunity for all parties to participate.

(f) Separation of functions. An employee or agent engaged in the performance of any investigative or prosecuting function for FHFA in a case may not, in that or in a factually related case, participate or advise in the recommended decision, the Director’s
review under §1209.55 of the recommended decision, or the Director’s final determination on the merits based upon his review of the recommended decision, except as a witness or counsel in the adjudicatory proceedings. This section shall not prohibit FHFA counsel of record from providing necessary and appropriate legal advice to the Director on supervisory (including information or legal advice as to settlement issues) or regulatory matters.

§ 1209.15 Filing of papers.

(a) Filing. All pleadings, motions, memoranda, and any other submissions or papers required to be filed in the proceeding shall be addressed to the presiding officer and filed with FHFA, 400 7th Street SW., Eighth Floor, Washington, DC 20219, in accordance with paragraphs (b) and (c) of this section.

(b) Manner of filing. Unless otherwise specified by the Director or the presiding officer, filing shall be accomplished by:

(1) Overnight delivery. Overnight U.S. Postal Service delivery or delivery by a reliable commercial delivery service for same day or overnight delivery to the address stated above; or

(2) U.S. Mail. First class, registered, or certified mail via the U.S. Postal Service; and

(3) Electronic media. Transmission by electronic media shall be required by and upon any conditions specified by the Director or the presiding officer. FHFA shall provide a designated site for the electronic filing of all papers in a proceeding in accordance with any conditions specified by the presiding officer. All papers filed by electronic media shall be filed concurrently in a manner set out above and in accordance with paragraph (c) of this section.

(c) Formal requirements as to papers filed—(1) Form. To be filed, all papers must set forth the name, address, telephone number, and electronic mail address of the representative or party seeking to make the filing. Additionally, all such papers must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced on 8½ x 11-inch paper and must be clear, legible, and formatted as required by paragraph (c)(5) of this section.

(2) Signature. All papers filed must be dated and signed as provided in §1209.13.

(3) Caption. All papers filed must include at the head thereof, or on a title page, the FHFA caption, title and docket number of the proceeding, the name of the filing party, and the subject of the particular paper.

(4) Number of copies. Unless otherwise specified by the Director or the presiding officer, an original and one copy of all pleadings, motions and memorandum, or other such papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

(5) Content format. All papers filed shall be formatted in such program(s) (e.g., MS WORD®, MS Excel®, or WordPerfect®) as the presiding officer or Director shall specify.


§ 1209.16 Service of papers.

(a) Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented, and upon any party who is not so represented, in accordance with the requirements of this section.

(b) Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Overnight U.S. Postal Service delivery or delivery by a reliable commercial delivery service for same day or overnight delivery to the parties’ respective street addresses; or

(3) First class, registered, or certified mail via the U.S. Postal Service; and

(4) For transmission by electronic media, each party shall promptly provide the presiding officer and all parties, in writing, an active electronic mail address where service will be accepted on behalf of such party. Any document transmitted via electronic mail for service on a party shall comply in all respects with the requirements of §1209.15(c).
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(5) Service of pleadings or other papers made by facsimile may not exceed a total page count of 30 pages. Any paper served by facsimile transmission shall meet the requirements of §1209.15(c).

(6) Any party serving a pleading or other paper by electronic media under paragraph (4) of this section also shall concurrently serve that pleading or paper by one of the methods specified in paragraphs (1) through (5) of this section.

(c) By the Director or the presiding officer. (1) All papers required to be served by the Director or the presiding officer upon a party who has appeared in the proceeding in accordance with §1209.72 shall be served by the means specified in paragraph (b) of this section.

(2) If a notice of appearance has not been filed in the proceeding for a party in accordance with §1209.72, the Director or the presiding officer shall make service upon the party by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person’s last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) Subpoenas. Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(e) Area of service. Service in any State or the District of Columbia, or any commonwealth, possession, territory or other place subject to the jurisdiction of the United States, or on any person doing business in any State or the District of Columbia, or any commonwealth, possession, territory or other place subject to the jurisdiction of the United States, or on any person as otherwise permitted by law, is effective without regard to the place where the hearing is held.

(f) Proof of service. Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof of service, which shall serve as prima facie evidence of the fact and date of service, shall show the date and manner of service and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of a representative of record. However, failure to file proof of service contemporaneously with the papers shall not affect the validity of actual service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 1209.17 Time computations.

(a) General rule. In computing any period of time prescribed or allowed under this part, the date of the act or event that commences the designated period of time is not included. Computations shall include the last day of the time period, unless the day falls on a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday or Federal holiday, the period of time shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed
§ 1209.20 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to FHFA’s counsel of record written offers or proposals for settlement of a proceeding without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any FHFA representative other than FHFA counsel of record. Submission of a written settlement offer does not provide a basis for adjourning, deferring or otherwise delaying all or any portion of a
§ 1209.21 Conduct of examination.

Nothing in this part limits or constrains in any manner any duty, authority, or right of FHFA to conduct or to continue any examination, investigation, inspection, or visitation of any regulated entity or entity-affiliated party.

§ 1209.22 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in subpart C of this part shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 1209.23 Commencement of proceeding and contents of notice of charges.

Proceedings under subpart C of this part are commenced by the Director by the issuance of a notice of charges, as defined in §1209.3(p), that must be served upon a respondent. A notice of charges shall state all of the following:

(a) The legal authority for the proceeding and for FHFA's jurisdiction over the proceeding;

(b) A statement of the matters of fact or law showing that FHFA is entitled to relief;

(c) A proposed order or prayer for an order granting the requested relief;

(d) Information concerning the nature of the proceeding and pertinent procedural matters, including: the requirement that the hearing shall be held in the District of Columbia; the presiding officer will set the date and location for an evidentiary hearing in a scheduling order to be issued not less than 30 days or more than 60 days after service of the notice of charges; contact information for FHFA enforcement counsel and the presiding officer, if known; submission information for filings and appearances, the time within which to request a hearing, and citation to FHFA Rules of Practice and Procedure; and

(e) Information concerning proper filing of the answer, including the time within which to file the answer as required by law or regulation, a statement that the answer shall be filed with the presiding officer or with FHFA as specified therein, and the address for filing the answer (and request for a hearing, if applicable).

§ 1209.24 Answer.

(a) Filing deadline. Unless otherwise specified by the Director in the notice, respondent shall file an answer within 20 days of service of the notice of charges initiating the enforcement action.

(b) Content of answer. An answer must respond specifically to each paragraph or allegation of fact contained in the notice of charges and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) Default. Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, FHFA counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the presiding officer shall file with the Director a recommended decision containing the findings and the relief sought in the
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notice. Any final order issued by the Director based upon a respondent’s failure to answer is deemed to be an order issued upon consent.

§ 1209.25 Amended pleadings.

(a) Amendments. The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent’s answer to the original notice, or within 10 days after service of the amended notice, whichever period is longer, unless the Director or presiding officer orders otherwise for good cause shown.

(b) Amendments to conform to the evidence. When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, or as the presiding officer may allow for good cause shown, such issues will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party’s action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 1209.26 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized representative of record constitutes a waiver of respondent’s right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Director a recommended decision containing the Agency’s findings and the relief sought in the notice.

§ 1209.27 Consolidation and severance of actions.

(a) Consolidation. On the motion of any party, or on the presiding officer’s own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the pre-hearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) Severance. The presiding officer may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 1209.28 Motions.

(a) In writing. (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) Oral motions. A motion may be made orally on the record, unless the presiding officer directs that such motion be reduced to writing, in which case the motion will be subject to the requirements of this section.

(c) Filing of motions. Motions must be filed with the presiding officer and served on all parties; except that following the filing of a recommended decision, motions must be filed with the
Director. Motions for pre-trial relief such as motions in limine or objections to offers of proof or experts shall be filed not less than 10 days prior to the date of the evidentiary hearing, except as provided with the consent of the presiding officer for good cause shown.

(d) Responses and replies. (1) Except as otherwise provided herein, any party may file a written response to a non-dispositive motion within 10 days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Director; and the moving party may file a written reply to a written response to a non-dispositive motion within five days after the service of the response, unless some other period is ordered by the presiding officer or the Director. The presiding officer shall not rule on any oral or written motion before each party with an interest in the motion has had an opportunity to respond as provided in this section.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed as consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) Dilatory motions. Frivolous, dilatory, or substantively repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) Dispositive motions. Dispositive motions are governed by §§ 1209.34 and 1209.35 of this part.

§ 1209.29 Discovery.

(a) General rule. (1) Limits on discovery. Subject to the limitations set out in paragraphs (a)(2), (b), (d), and (e) of this section, a party to a proceeding under this part may obtain document discovery by serving upon any other party in the proceeding a written request to produce documents. For purposes of such requests, the term “documents” may be defined to include records, drawings, graphs, charts, photographs, recordings, or data stored in electronic form or other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably usable form (e.g., electronically stored information), as well as written material of all kinds.

(2) Discovery plan. (i) In the initial scheduling conference held in accordance with §1209.36, or otherwise at the earliest practicable time, the presiding officer shall require the parties to confer in good faith to develop and submit a joint discovery plan for the timely, cost-effective management of document discovery (including, if applicable, electronically stored information). The discovery plan should provide for the coordination of similar discovery requests by multiple parties, if any, and specify how costs are to be apportioned among those parties. The discovery plan shall specify the form of electronic productions, if any. Documents are to be produced in accordance with the technical specifications described in the discovery plan.

(ii) Discovery in the proceeding may commence upon the approval of the discovery plan by the presiding officer. Thereafter, the presiding officer may interpret or modify the discovery plan for good cause shown or in his or her discretion due to changed circumstances.

(iii) Nothing in paragraph (a)(2) of this section shall be interpreted or deemed to require the production of documents that are privileged or not reasonably accessible because of undue burden or cost, or to require any document production otherwise inconsistent with the limitations on discovery set forth in this part.

(b) Relevance and scope. (1) A party may obtain document discovery regarding any matter not privileged that is materially relevant to the charges or allowable defenses raised in the pending proceeding.

(2) The scope of available discovery shall be limited in accordance with subpart C of this part. Any request for the production of documents that seeks to obtain privileged information or documents not materially relevant under paragraph (b)(1) of this section, or that is unreasonable, oppressive, excessive in scope, unduly burdensome, cumulative, or repetitive of any prior discovery requests, shall be denied or modified.

(3) A request for document discovery is unreasonable, oppressive, excessive
§ 1209.30 Request for document discovery from parties.

(a) General rule. Each request for the production of documents must conform to the requirements of this part.

(1) Limitations. Subject to applicable limitations on discoverable matter, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the testimonial phase of the hearing. No exception to this discovery time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the 20-day requirement of this paragraph.

(b) Privileged matter. Privileged documents are not discoverable. Privileged documents include the attorney-client privilege, work-product privilege, any government’s or government agency’s deliberative process privilege, and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(2) Discovery plan. Document discovery under subpart C of this part shall be consistent with any discovery

in scope, or unduly burdensome— and shall be denied or modified—if, among other things, the request:

(i) Fails to specify justifiable limitations on the relevant subject matter, time period covered, search parameters, or the geographic location(s) or data repositories to be searched;

(ii) Fails to identify documents with sufficient specificity;

(iii) Seeks material that is duplicative, cumulative, or obtainable from another source that is more accessible, cost-effective, or less burdensome;

(iv) Calls for the production of documents to be delivered to the requesting party or his or her designee and fails to provide a written agreement by the requestor to pay in advance for the costs of production in accordance with § 1209.30, or otherwise fails to take into account costs associated with processing electronically stored information or any cost-sharing agreements between the parties;

(v) Fails to afford the responding party adequate time to respond; or

(vi) Fails to take into account retention policies or security protocols with respect to Federal information systems.

(c) Forms of discovery. Discovery shall be limited to requests for production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories is not permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) Privileged matter. Privileged documents are not discoverable. Privileged documents include the attorney-client privilege, work-product privilege, any government’s or government agency’s deliberative process privilege, and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

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(e) Time limits. All discovery matters, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the testimonial phase of the hearing. No exception to this discovery time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the 20-day requirement of this paragraph.

(f) Production. Documents must be produced as they are kept in the usual course of business, or labeled and organized to correspond with the categories in the request, or otherwise produced in a manner determined by mutual agreement between the requesting party and the party or non-party to whom the request is directed in accordance with this part.
plan approved by the presiding officer under §1209.29.

(b) Production and costs—(1) General rule. Subject to the applicable limitations on discovery in this part and the discovery plan, the requesting party shall specify a reasonable time, place, and manner for the production of documents and the performance of any related acts. The responding party shall produce documents to the requesting party in a manner consistent with the discovery plan.

(2) Costs. All costs associated with document productions—including, without limitation, photocopying (as specified in paragraph (b)(4) of this section) or electronic processing (as specified in paragraph (b)(5) of this section)—shall be born by the requesting party, or otherwise in accordance with any discovery plan approved by the presiding officer that may require such costs be apportioned between parties, or as otherwise ordered by the presiding officer. Nothing in this part shall be deemed to require FHFA to produce privileged documents or any electronic records in violation of applicable Federal law or security protocols.

(c) Obligation to update responses. A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect;

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) Motions to strike or limit discovery requests. (1) Any party served with a document discovery request may object within 30 days of service of the request by filing a motion to strike or limit the request in accordance with the provisions of §1209.28 of this part. No other party may file an objection. If an objection is made only to a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and §1209.28 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response in accordance with the provisions of §1209.28. A reply by the moving party, if any, shall be governed by §1209.28. No other party may file a response.
§ 1209.30

(e) Privilege. At the time other documents are produced, all documents withheld on a claim of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege on a privilege log. When similar documents that are protected by the government's deliberative process, investigative or examination privilege, the attorney work-product doctrine, or the attorney-client privilege are voluminous, such documents may be identified on the log by category instead of by individual document. The presiding officer has discretion to permit submission of a privilege log subsequent to the document production(s), which may occur on a rolling basis if agreed to by the parties in the discovery plan, and to determine whether an identification by category is sufficient to provide notice of withheld documents.

(f) Motions to compel production. (1) If a party withholds any document as privileged or fails to comply fully with a document discovery request, the requesting party may, within 10 days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of §1209.28 for the issuance of a subpoena compelling the production of any such document.

(2) The party who asserted the privilege or failed to comply with the request may, within five days of service of a motion for the issuance of a subpoena compelling production, file a written response to the motion. No other party may file a response.

(g) Ruling on motions—(1) Appropriate protective orders. After the time for filing a response to a motion to compel pursuant to this section has expired, the presiding officer shall rule promptly on any such motion. The presiding officer may deny, grant in part, or otherwise modify any request for the production of documents, if he determines that a discovery request, or any one or more of its terms, seeks to obtain the production of documents that are privileged or otherwise not within the scope of permissible discovery under §1209.29(b), and may issue appropriate protective orders, up such conditions as justice may require.

(2) No stay. The pendency of a motion to strike or limit discovery, or to compel the production of any document, shall not stay or continue the proceeding, unless otherwise ordered by the presiding officer. Notwithstanding any other provision in this part, the presiding officer may not release, or order any party to produce, any document withheld on the basis of privilege, if the withholding party has stated to the presiding officer its intention to file with the Director a timely motion for interlocutory review of the presiding officer's privilege determination or order to produce the documents, until the Director has rendered a decision on the motion for interlocutory review.

(3) Interlocutory review by the Director. Interlocutory review of a privilege determination or document discovery subpoena of the presiding officer shall be in accordance with §1209.33. To the extent necessary to rule promptly on such matters, the Director may request that the presiding officer provide additional information from the record. As provided by §1209.33 of this part, a pending interlocutory review of a privilege determination or document discovery subpoena shall not stay the proceedings, unless otherwise ordered by the presiding officer or the Director.

(h) Enforcement of document discovery subpoenas—(1) Authority. If the presiding officer or Director issues a subpoena compelling production of documents by a party in a proceeding under this part, in the event of noncompliance with the subpoena and to the extent authorized by section 1379D(c)(1) of the Safety and Soundness Act (12 U.S.C. 4641(c)(1)), the Director or the subpoenaing party may apply to the appropriate United States district court for an order requiring compliance with the subpoena.

(2) United States district court jurisdiction. As provided by section 1379D(c)(2) of the Safety and Soundness Act (12 U.S.C. 4641(c)(2)), the appropriate United States district court has the jurisdiction and power to order and to require compliance with any discovery subpoena issued under this part.

(3) No stay; sanctions. The judicial enforcement of a discovery subpoena
shall not operate as a stay of the proceedings, unless the presiding officer or the Director orders a stay of such duration as the presiding officer or Director may find reasonable and in the best interest of the parties or as justice may require. A party’s right to seek judicial enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the presiding officer or Director against a party who fails to produce or induces another to fail to produce subpoenaed documents.

§ 1209.31 Document discovery subpoenas to non-parties.

(a) General rules—(1) Application for subpoena. As provided under this part, any party may apply to the presiding officer for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain the proposed document subpoena, and a brief statement of facts demonstrating that the documents are materially relevant to the charges and issues presented in the proceeding and the reasonableness of the scope of the document request. The subpoenaing party shall specify a reasonable time, place, and manner for production in response to the subpoena, and state its unequivocal intention to pay for the production of the documents as provided in this part.

(2) Service of subpoena. A party shall apply for a document subpoena under this section only within the time period during which such party could serve a discovery request under §1209.30 of this part. The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all other parties. Document subpoenas may be served in the District of Columbia, or any State, Territory, possession, or other place subject to the jurisdiction of the United States, or as otherwise provided by law.

(3) Presiding officer’s discretion. The presiding officer shall issue promptly any document subpoena applied for under this section subject to the application conditions set forth in this section and his or her discretion. If the presiding officer determines that the application does not set forth a valid basis for the issuance of the requested document subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, unduly burdensome, or otherwise objectionable under §1209.29(b), he may refuse to issue the requested document subpoena or may issue it in a modified form upon such additional conditions as may be determined by the presiding officer.

(b) Motion to quash or modify—(1) Limited appearance. Any non-party to a pending proceeding to whom a document subpoena is directed may enter a limited appearance, through a representative or on his or her own behalf, before the presiding officer to file with the presiding officer a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena.

(2) Objections. Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of any privileges, upon which a party could object to a discovery document request under §1209.30 and during the same time limits during which such an objection could be filed.

(3) Responses and replies. The party who obtained the subpoena may respond to such motion within 10 days of service of the motion; the response shall be served on the non-party in accordance with this part. Absent express leave of the presiding officer, no other party may respond to the non-party’s motion. The non-party may file a reply within five days of service of a response.

(4) No stay. A non-party’s right to seek to quash or modify a document subpoena shall not stay the proceeding, or limit in any manner the sanctions that may be imposed by the presiding officer against a party who induces another to fail to produce any such subpoenaed documents. No party may rely upon the pendency of a non-party’s motion to quash or modify a document subpoena to excuse performance of any action required of that party under this part.

(c) Enforcing document subpoenas to non-parties—(1) Application for enforcement of subpoena. If a non-party fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer that directs
compliance with all or any portion of a document subpoena issued pursuant to this section, the subpoenaing party or any other aggrieved party to the proceeding may, to the extent authorized by section 1379D(c) of the Safety and Soundness Act (12 U.S.C. 4641(c)), apply to an appropriate United States district court for an order requiring compliance with the subpoena.

(2) No stay. A party's right to seek district court enforcement of a non-party document production subpoena under this section shall not automatically stay an enforcement proceeding under the Safety and Soundness Act.

(3) Sanctions. A party's right to seek district court enforcement of a non-party document subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces another to fail to comply with any subpoena issued under this section.

§ 1209.32 Deposition of witness unavailable for hearing.

(a) General rules. (1) If a witness will not be available for the hearing, a party desiring to preserve that witness’s testimony for the record may apply to the presiding officer in accordance with the procedures set forth in paragraph (a)(2) of this section for the issuance of a subpoena or subpoena ducum tecum requiring attendance of the witness at a deposition for the purpose of preserving that witness’s testimony. The presiding officer may issue a deposition subpoena under this section upon a showing that:

(i) The witness will be unable to attend or may be prevented from attending the testimonial phase of the hearing because of age, sickness, or infirmity, or will be otherwise unavailable;

(ii) The subpoenaing party did not cause or contribute to the unavailability of the witness for the hearing;

(iii) The witness has personal knowledge and the testimony is reasonably expected to be materially relevant to claims, defenses, or matters determined to be at issue in the proceeding; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed anywhere within the United States, or its Territories and possessions, in which that witness resides or has a regular place of employment or such other convenient place as the presiding officer shall fix.

(3) Subpoenas must be issued promptly upon request, unless the presiding officer determines that the request fails to set forth a valid basis under this section for its issuance. Before making a determination that there is no valid basis for issuing the subpoena, the presiding officer shall require a written response from the party requesting the subpoena or require attendance at a conference to determine whether there is a valid basis upon which to issue the requested subpoena.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the presiding officer orders otherwise, no deposition under this section shall be taken on fewer than 10 days’ notice to the witness and all parties. Deposition subpoenas may be served anywhere within the United States or its Territories and possessions, or on any person doing business anywhere within the United States or its Territories and possessions, or as otherwise permitted by law.

(b) Objections to deposition subpoenas. (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the presiding officer under §1209.28 of this part to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than 10 days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.
§ 1209.33 Procedure upon deposition.

(c) Procedure upon deposition. (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for objection might have been avoided if the objection had been presented timely. All questions, answers, and objections must be recorded and transcribed. Videotaped depositions must be transcribed for the record; copies and transcriptions must be supplied to each party.

(2) Any party may move before the presiding officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence that, during the deposition, the witness has refused to submit.

(3) The deposition transcript must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) Enforcing subpoenas. If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer made upon motion under paragraph (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by section 1379D(c) of the Safety and Soundness Act (12 U.S.C. 4641(c)), apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the presiding officer has ordered enforced. A party’s right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the presiding officer on a party who fails to comply with or induces a failure to comply with a subpoena issued under this section.

§ 1209.33 Interlocutory review.

(a) General rule. The Director may review a ruling of the presiding officer prior to the certification of the record to the Director only in accordance with the procedures set forth in this section.

(b) Scope of review. The Director may exercise interlocutory review of a ruling of the presiding officer if the Director finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) Procedure. Any motion for interlocutory review shall be filed by a party with the presiding officer within 10 days of his or her ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Director for final disposition. In referring the matter to the Director, the presiding officer may indicate agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(d) Suspension of proceeding. Neither a request for interlocutory review nor any disposition of such a request by the Director under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Director.

§ 1209.34 Summary disposition.

(a) In general. The presiding officer shall recommend that the Director issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and
(2) The movant is entitled to a decision in its favor as a matter of law.

(b) Filing of motions and responses. (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 30 days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits, and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which the party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) Hearing on motion. At the request of any party or on his or her own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) Decision on motion. Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Director, under §1209.53. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion.

§1209.35 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he shall defer submitting a recommended decision to the Director as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§1209.36 Scheduling and pre-hearing conferences.

(a) Scheduling conference. After service of a notice of charges commencing a proceeding under this part, the presiding officer shall order the representative(s) of record for each party, and any party not so represented who is appearing pro se, to meet in person or to confer by telephone at a specified time within 30 days of service of such notice for the purpose of setting the time and place of the testimonial hearing on the record to be held within the District of Columbia and scheduling the course and conduct of the proceeding (the “scheduling conference”). The identification of potential witnesses, the time for and manner of discovery, and the exchange of any pre-hearing materials including witness lists, statements of issues, stipulations, exhibits, and any other materials also may be determined at the scheduling conference.

(b) Pre-hearing conferences. The presiding officer may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct representatives for the parties to meet with (in person or by telephone) at a pre-hearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;
§ 1209.37 Pre-hearing submissions.

(a) General. Within the time set by the presiding officer, but in no case later than 10 days before the start of the hearing, each party shall serve on every other party the serving party’s:

(1) Pre-hearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness, and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) Effect of failure to comply. No witness may testify and no exhibit may be introduced at the hearing that is not listed in the pre-hearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 1209.38 Hearing subpoenas.

(a) Issuance. (1) Upon application of a party to the presiding officer showing relevance and reasonableness of scope of the testimony or other evidence sought, the presiding officer may issue a subpoena or a subpoena ducetur requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any place within the United States or its territories and possessions, or as otherwise provided by law, at the designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of or during a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the presiding officer.

(3) The presiding officer shall promptly issue any hearing subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue the subpoena in a modified form upon any conditions consistent with subpart C of this part. Upon issuance by the presiding officer, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) Motion to quash or modify. (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within 10 days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but no more than 10 days after the date of service of the subpoena upon the movant.

(c) Enforcing subpoenas. If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a hearing subpoena, the
subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to §1209.31. A party’s right to seek court enforcement of a hearing subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§§ 1209.39–1209.49 [Reserved]

§ 1209.50 Conduct of hearings.

(a) General rules. (1) Conduct. Hearings shall be conducted in accordance with chapter 5 of title 5 and other applicable law and so as to provide a fair and expeditious presentation of the relevant disputed issues. Except as limited by this subpart, each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) Order of hearing. FHFA counsel of record shall present its case-in-chief first, unless otherwise ordered by the presiding officer or unless otherwise expressly specified by law or regulation. FHFA counsel of record shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent’s closing statement. If there are multiple respondents, respondents may agree among themselves as to the order of presentation of their cases, but if they do not agree, the presiding officer shall fix the order.

(3) Examination of witnesses. Only one representative for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the presiding officer may permit more than one representative for the party presenting the witness to conduct the examination. A party may have one representative conduct the direct examination and another representative conduct re-direct examination of a witness, or may have one representative conduct the cross examination of a witness and another representative conduct the re-cross examination of a witness.

(4) Stipulations. Unless the presiding officer directs otherwise, all documents that the parties have stipulated as admissible shall be admitted into evidence upon commencement of the hearing.

(b) Transcript. The hearing shall be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost therefor. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the presiding officer’s own motion.

§ 1209.51 Evidence.

(a) Admissibility. (1) Except as otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 552 et seq.) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to subpart C of this part.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to subpart C of this part if such evidence is relevant, material, probative and reliable, and not unduly repetitive.

(b) Official notice. (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and of any materially relevant information in the public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Director shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) Documents. (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any
document, including a report of examination, oversight activity, inspection, or visitation prepared by FHFA or by another Federal or State financial institution’s regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer’s discretion, be used with or without being admitted into evidence.

(d) Objections. (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record and transmit such exhibits to the Director.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) Stipulations. The parties may stipulate as to any relevant matters of fact or the authentication of any document to be admitted into evidence. Such stipulations must be received in evidence at a hearing, are binding on the parties with respect to the matters stipulated, and shall be made part of the record.

(f) Depositions of unavailable witnesses. (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with §1209.32, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the deposition the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition or related exhibits received in evidence at the hearing in accordance with this section shall constitute a part of the record.

§ 1209.52 Post-hearing filings.

(a) Proposed findings and conclusions and supporting briefs. (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed with the presiding officer. Any party may file with the presiding officer proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the presiding officer, unless otherwise ordered by the presiding officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page and line references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(3) A party is deemed to have waived any issue not raised in proposed findings or conclusions timely filed by that party.

(b) Reply briefs. Reply briefs may be filed within 15 days after the date on which the parties’ proposed findings and conclusions and proposed order are due. Reply briefs shall be limited strictly to responding to new matters, issues, or arguments raised by another party in papers filed in the proceeding. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) Simultaneous filing required. The presiding officer shall not order the filing by any party of any brief or reply brief supporting proposed findings and conclusions in advance of the other party’s filing of its brief.
§ 1209.53 Recommended decision and filing of record.

(a) Filing of recommended decision and record. Within 45 days after expiration of the time allowed for filing reply briefs under § 1209.52(b), the presiding officer shall file with and certify to the Director, for decision, the record of the proceeding. The record must include the presiding officer’s recommended decision, recommended findings of fact and conclusions of law, and proposed order; all pre-hearing and hearing transcripts, exhibits and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The presiding officer shall serve upon each party the recommended decision, recommended findings and conclusions, and proposed order.

(b) Filing of index. At the same time the presiding officer files with and certifies to the Director, for final determination, the record of the proceeding, the presiding officer shall furnish to the Director a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the presiding officer in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ 1209.54 Exceptions to recommended decision.

(a) Filing exceptions. Within 30 days after service of the recommended decision, recommended findings and conclusions, and proposed order under § 1209.53, a party may file with the Director written exceptions to the presiding officer’s recommended decision, recommended findings and conclusions, and proposed order; to the admission or exclusion of evidence; or to the failure of the presiding officer to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) Effect of failure to file or raise exceptions. (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Director if the party taking exception had an opportunity to raise the same objection, issue, or argument before the presiding officer and failed to do so.

(c) Contents. (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in or omissions from the presiding officer’s recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the presiding officer’s recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception. Exceptions and briefs in support shall not exceed a total of 30 pages, except by leave of the Director on motion.

(3) One reply brief may be submitted by each party opposing the exceptions within 10 days of service of exceptions and briefs in support of exceptions. Reply briefs shall not exceed 15 pages, except by leave of the Director on motion.

§ 1209.55 Review by Director.

(a) Notice of submission to the Director. When the Director determines that the record in the proceeding is complete, the Director shall serve notice upon the parties that the case has been submitted to the Director for final decision.

(b) Oral argument before the Director. Upon the initiative of the Director or on the written request of any party filed with the Director within the time for filing exceptions, the Director may order and hear oral argument on the
§ 1209.56 Exhaustion of administrative remedies.

To exhaust administrative remedies as to any issue on which a party disagrees with the presiding officer’s recommendations, a party must file exceptions with the Director under §1209.54 of this part. A party must exhaust administrative remedies as a precondition to seeking judicial review of any final decision and order issued under this part.

§ 1209.57 Judicial review; no automatic stay.

(a) Judicial review. Judicial review of any final order of the Director shall be exclusively as provided by section 1374 of the Safety and Soundness Act (12 U.S.C. 4634).

(b) No automatic stay. Commencement of proceedings for judicial review of a final decision and order of the Director may not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director. The Director may, in his or her discretion and on such terms as he finds just, stay the effectiveness of all or any part of an order of the Director pending a final decision on a petition for review of that order.

§§ 1209.58–1209.69 [Reserved]

Subpart D—Parties and Representational Practice Before the Federal Housing Finance Agency; Standards of Conduct

§ 1209.70 Scope.

Subpart D of this part contains rules governing practice by parties or their representatives before FHFA. This subpart addresses the imposition of sanctions by the presiding officer or the Director against parties or their representatives in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension, or disbarment—against individuals who appear before FHFA in a representational capacity either in an adjudicatory proceeding under this part or in any other matters connected with presentations to FHFA relating to a client’s or other principal’s rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of FHFA are not subject to disciplinary proceedings under this subpart.

§ 1209.71 Definitions.

Practice before FHFA for the purposes of subpart D of this part, includes, but is not limited to, transacting any business with FHFA as counsel of record, representative, or agent for any other person, unless the Director orders otherwise. Practice before FHFA also includes the preparation of any statement, opinion, or other paper by a counsel, representative or agent that is filed with FHFA in any certification,
§ 1209.72 Appearance and practice in adjudicatory proceedings.

(a) Appearance before FHFA or a presiding officer—(1) By attorneys. A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, commonwealth, possession or territory of the United States, or the District of Columbia, and who is not currently suspended or disbarred from practice before FHFA.

(2) By non-attorneys. An individual may appear on his or her own behalf, pro se. A member of a partnership may represent the partnership and a duly authorized officer, director, employee, or other agent of any corporation or other entity not specifically listed herein may represent such corporation or other entity; provided that such officer, director, employee, or other agent is not currently suspended or disbarred from practice before FHFA. A duly authorized officer or employee of any Government unit, agency, or authority may represent that unit, agency, or authority.

(b) Notice of appearance. Any person appearing in a representative capacity on behalf of a party, including FHFA, shall execute and file a notice of appearance with the presiding officer at or before the time such person submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the representative thereby agrees and represents that he is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the presiding officer, continue to accept service until a new representative has filed a notice of appearance or until the represented party indicates that he or she will proceed on a pro se basis. Unless the representative filing the notice is an attorney, the notice of appearance shall also be executed by the person represented or, if the person is not an individual, by the chief executive officer, or duly authorized officer of that person.

§ 1209.73 Conflicts of interest.

(a) Conflict of interest in representation. No representative shall represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be limited materially by that representative’s responsibilities to a third person or by that representative’s own interests. The presiding officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) Certification and waiver. If any person appearing as counsel or other representative represents two or more parties to an adjudicatory proceeding, or also represents a non-party on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 1209.72 of this part as follows:

1. That the representative has personally and fully discussed the possibility of conflicts of interest with each affected party and non-party; and
2. That each affected party and non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 1209.74 Sanctions.

(a) General rule. Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has
acted or failed to act in a manner re-
quired by applicable statute, regula-
tion, or order, and that act or failure
to act:
(1) Constitutes contemptuous con-
duct, which includes dilatory, obstruc-
tionist, egregious, contumacious, un-
ethical, or other improper conduct at
any phase of any proceeding, hearing,
or appearance before a presiding officer
or the Director;
(2) Has caused some other party ma-
terial and substantive injury, includ-
ing, but not limited to, incurring ex-
penses including attorney’s fees or ex-
periencing prejudicial delay;
(3) Is a clear and unexcused violation
of an applicable statute, regulation, or
order; or
(4) Has delayed the proceeding un-
duly.
(b) Sanctions. Sanctions that may be
imposed include, but are not limited to,
any one or more of the following:
(1) Issuing an order against a party;
(2) Rejecting or striking any testi-
mony or documentary evidence offered,
or other papers filed, by the party;
(3) Precluding the party from con-
testing specific issues or findings;
(4) Precluding the party from offering
certain evidence or from challenging or
contesting certain evidence offered by
another party;
(5) Precluding the party from making
a late filing or conditioning a late fil-
ing on any terms that may be just; or
(6) Assessing reasonable expenses, in-
cluding attorney’s fees, incurred by
any other party as a result of the im-
proper action or failure to act.
(c) Procedure for imposition of sanc-
tions. (1) The presiding officer, on the
motion of any party, or on his or her
own motion, and after such notice and
responses as may be directed by the
presiding officer, may impose any sanc-
tion authorized by this section. The
presiding officer shall submit to the
Director for final ruling any sanction
that would result in a final order that
terminates the case on the merits or is
otherwise dispositive of the case.
(2) Except as provided in paragraph
(d) of this section, no sanction author-
ized by this section, other than refusing
to accept late papers, shall be im-
posed without prior notice to all par-
ties and an opportunity for any rep-
resentative or party against whom
sanctions may be imposed to be heard.
The presiding officer shall determine
and direct the appropriate notice and
form for such opportunity to be heard.
The opportunity to be heard may be
limited to an opportunity to respond
verbally immediately after the act or
inaction in question is noted by the
presiding officer.
(3) For purposes of interlocutory re-
view, motions for the imposition of
sanctions by any party and the imposi-
tion of sanctions shall be treated the
same as motions for any other ruling
by the presiding officer.
(4) Nothing in this section shall be
read to preclude the presiding officer
or the Director from taking any other
action or imposing any other restric-
tion or sanction authorized by any ap-
plicable statute or regulation.
(d) Sanctions for contemptuous conduct.
If, during the course of any proceeding,
a presiding officer finds any represent-
vative or any individual representing
himself to have engaged in contemp-
tuous conduct, the presiding officer
may summarily suspend that indi-
vidual from participating in that or
any related proceeding or impose any
other appropriate sanction.

§ 1209.75 Censure, suspension, disbar-
ment, and reinstatement.
(a) Discretionary censure, suspension,
and disbarment. (1) The Director may
censure any individual who practices
or attempts to practice before FHFA or
suspend or revoke the privilege to ap-
pear or practice before FHFA of such
individual if, after notice of and oppor-
tunity for hearing in the matter, that
individual is found by the Director—
(i) Not to possess the requisite quali-
fications or competence to represent
others;
(ii) To be seriously lacking in char-
acter or integrity or to have engaged in
material unethical or improper profes-
ional conduct;
(iii) To have caused unfair and mate-
rial injury or prejudice to another
party, such as prejudicial delay or un-
necessary expenses including attor-
ney’s fees;
(iv) To have engaged in, or aided and
abetted, a material and knowing viola-
tion of the Safety and Soundness Act,
§ 1209.75

the Federal Home Loan Mortgage Corporation Act, the Federal National Mortgage Association Charter Act, or the rules or regulations issued under those statutes, or any other applicable law or regulation;

(v) To have engaged in contemptuous conduct before FHFA;

(vi) With intent to defraud in any manner, to have willfully and knowingly deceived, misled, or threatened any client or prospective client; or

(vii) Within the last 10 years, to have been convicted of an offense involving moral turpitude, dishonesty, or breach of trust, if the conviction has not been reversed on appeal. A conviction within the meaning of this paragraph shall be deemed to have occurred when the convicting court enters its judgment or order, regardless of whether an appeal is pending or could be taken and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Suspension or revocation on the grounds set forth in paragraphs (a)(1)(ii) through (vii) of this section shall only be ordered upon a further finding that the individual's conduct or character was sufficiently egregious as to justify suspension or revocation. Suspension or disbarment under this paragraph shall continue until the applicant has been reinstated by the Director for good cause shown or until, in the case of a suspension, the suspension period has expired.

(3) If the final order against the respondent is for censure, the individual may be permitted to practice before FHFA, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in FHFA's files.

(b) Mandatory suspension and disbarment. (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any State, commonwealth, possession or territory of the United States, or the District of Columbia; any person who has been and remains suspended or barred from practice by or before the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Board, the Farm Credit Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission is also suspended automatically from appearing or practicing before FHFA. A disbarment or suspension within the meaning of this paragraph shall be deemed to have occurred when the disbarring or suspending agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken and regardless of whether a violation is admitted in the consent.

(2) A suspension or disbarment from practice before FHFA under paragraph (b)(1) of this section shall continue until the person suspended or disbarred is reinstated under paragraph (d)(2) of this section.

(c) Notices to be filed. (1) Any individual appearing or practicing before FHFA who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall file promptly with the Director a copy thereof, together with any related opinion or statement of the agency or tribunal involved.

(2) Any individual appearing or practicing before FHFA who is or within the last 10 years has been convicted of a felony or of a misdemeanor that resulted in a sentence of prison term or in a fine or restitution order totaling more than $5,000 promptly shall file a notice with the Director. The notice shall include a copy of the order imposing the sentence or fine, together with any related opinion or statement of the court involved.

(d) Reinstatement. (1) Unless otherwise ordered by the Director, an application for reinstatement for good cause may be made in writing by a person suspended or disbarred under paragraph (a)(1) of this section at any time more than three years after the effective
Subpart E—Civil Money Penalty Inflation Adjustments

§ 1209.80 Inflation adjustments.

The maximum amount of each civil money penalty within FHFA’s jurisdiction, as set by the Safety and Soundness Act and thereafter adjusted in accordance with the Inflation Adjustment Act, is as follows:

<table>
<thead>
<tr>
<th>U.S. Code citation</th>
<th>Description</th>
<th>New adjusted maximum penalty amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 U.S.C. 4636(b)(1)</td>
<td>First Tier</td>
<td>$10,982</td>
</tr>
<tr>
<td>12 U.S.C. 4636(b)(2)</td>
<td>Second Tier</td>
<td>$54,910</td>
</tr>
<tr>
<td>12 U.S.C. 4636(b)(4)</td>
<td>Third Tier (Regulated Entity or Entity-Affiliated party)</td>
<td>$2,196,380</td>
</tr>
</tbody>
</table>

Subpart F—Suspension or Removal of an Entity-Affiliated Party Charged With Felony

§ 1209.100 Scope.

Subpart F of this part applies to informal hearings afforded to any entity-affiliated party who has been suspended, removed, or prohibited from
§ 1209.101 Suspension, removal, or prohibition.

(a) Notice of suspension or prohibition.

(1) As provided by section 1377(h)(1) of the Safety and Soundness Act (12 U.S.C. 4636a(h)(1)), if an entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime that involves dishonesty or breach of trust that is punishable by imprisonment for more than one year under State or Federal law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity.

(2) In accordance with section 1377(h)(1) of the Safety and Soundness Act (12 U.S.C. 4636a(h)(1)), the notice of suspension or prohibition is effective upon service. A copy of such notice will be served on the relevant regulated entity. The notice will state the basis for the suspension and the right of the party to request an informal hearing as provided in §1209.102. The suspension or prohibition is to remain in effect until the completion of any informal hearing or appeal provided under section 1377(h)(4) of the Safety and Soundness Act (12 U.S.C. 4636a(h)(4)). The pendency of an informal hearing, if any, does not stay any notice of suspension or prohibition or order of removal or prohibition under subpart F of this part.

(b) Order of removal or prohibition. As provided by section 1377(h)(2) of the Safety and Soundness Act (12 U.S.C. 4636a(h)(2)), at such time as a judgment of conviction is entered (or pretrial diversion or other plea bargain is agreed to) in connection with a crime as referred to above in paragraph (a) (the "conviction"), and the conviction is no longer subject to appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director. A copy of such order will be served on the relevant regulated entity, at which time the entity-affiliated party shall immediately cease to be a director or officer of the regulated entity. The notice will state the basis for the removal or prohibition and the right of the party to request a hearing as provided in §1209.102.

(c) Effective period. Unless terminated by the Director, a notice of suspension or order of removal issued under section 1377(h)(1) or (2) of the Safety and Soundness Act (12 U.S.C. 4636a(h)(1), (2)) shall remain effective and outstanding until the completion of any informal hearing or appeal provided under section 1377(h)(4) of the Safety and Soundness Act (12 U.S.C. 4636a(h)(4)).

(d) Effect of acquittal. As provided by section 1377(h)(2)(B)(ii) of the Safety and Soundness Act (12 U.S.C. 4636a(h)(2)(B)(ii)), a finding of not guilty or other disposition of the charge does not preclude the Director from instituting removal, suspension, or prohibition proceedings under section 1377(a) or (b) of the Safety and Soundness Act (12 U.S.C. 4636a(a), (b)).

(e) Preservation of authority. Action by the Director under section 1377(h) of the Safety and Soundness Act (12 U.S.C. 4636a(h)), shall not be deemed as a predicate or a bar to any other regulatory, supervisory, or enforcement action under the Safety and Soundness Act.

§ 1209.102 Hearing on removal or suspension.

(a) Hearing requests—(1) Deadline. An entity-affiliated party served with a notice of suspension or prohibition or an order of removal or prohibition, within 30 days of service of such notice or order, may submit to the Director a written request to appear before the
Director to show that his or her continued service or participation in the affairs of the regulated entity will not pose a threat to the interests of, or threaten to impair public confidence in, the Enterprises or the Banks. The request must be addressed to the Director and sent to the Federal Housing Finance Agency at 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219, by:

(i) Overnight U.S. Postal Service delivery or delivery by a reliable commercial delivery service for same day or overnight delivery to the address stated above; or

(ii) First class, registered, or certified mail via the U.S. Postal Service.

(2) Waiver of appearance. An entity-affiliated party may elect in writing to waive his or her right to appear to make a statement in person or through counsel and have the matter determined solely on the basis of his or her written submission.

(b) Form and timing of hearing. (1) Informal hearing. Hearings under subpart F of this part are not subject to the formal adjudication provisions of the Administrative Procedure Act (5 U.S.C. 554 through 557), and are not conducted under subpart C of this part.

(2) Setting of the hearing. Upon receipt of a timely request for a hearing, the Director will give written notice and set a date within 30 days for the entity-affiliated party to appear, personally, or through counsel, before the Director or his or her designee(s) to submit written materials (or, at the discretion of the Director, oral testimony and oral argument) to make the necessary showing under paragraph (a) of this section. The entity-affiliated party may submit a written request for additional time for the hearing to commence, without undue delay, and the Director may extend the hearing date for a specified time.

(3) Oral testimony. The Director or his or her designee, in his or her discretion, may deny, permit, or limit oral testimony in the hearing.

(c) Conduct of the hearing—(1) Hearing officer. A hearing under this section may be presided over by the Director or one or more designated FHFA employees, except that an officer designated by the Director (hearing officer) to conduct the hearing may not have been involved in an underlying criminal proceeding, a factually related proceeding, or an enforcement proceeding in a prosecutorial or investigative role. This provision does not preclude the Director otherwise from seeking information on the matters at issue from appropriate FHFA staff on an as needed basis consistent with §1209.101(d)(2).

(2) Submissions. All submissions of the requestor and FHFA’s counsel of record must be received by the Director or his or her designee no later than 10 days prior to the date set for the hearing. FHFA may respond in writing to the requestor’s submission and serve the requestor (and any other interested party such as the regulated entity) not later than the date fixed by the hearing officer for submissions or other time period as the hearing officer may require.

(3) Procedures. (i) Fact finding authority of the hearing officer. The hearing officer shall determine all procedural matters under subpart F of this part, permit or limit the appearance of witnesses in accordance with paragraph (b)(3) of this section, and impose time limits as he or she deems reasonable. All oral statements, witness testimony, if permitted, and documents submitted that are found by the hearing officer to be materially relevant to the proceeding and not unduly repetitious may be considered. The hearing officer may question any person appearing in the proceeding, and may make any ruling reasonably necessary to ensure the full and fair presentation of evidence and to facilitate the efficient and effective operation of the proceeding.

(ii) Statements to an officer. Any oral or written statement made to the Director, a hearing officer, or any FHFA employee under subpart F of this part is deemed to be a statement made to a Federal officer or agency within the meaning of 18 U.S.C. 1006.

(iii) Oral testimony. If either the requestor or FHFA counsel of record desires to present oral testimony to supplement the party’s written submission he or she must make a request in writing to the hearing officer not later than 10 days prior to the hearing, as
Federal Housing Finance Agency

§ 1209.103

Recommended and final decisions.

(a) Recommended decision—(1) Written recommended decision of the hearing officer. Not later than 20 days following the close of the hearing (or if the requestor waived a hearing, from the deadline for submission of the written materials), the hearing officer will serve a copy of the recommended decision on the parties to the proceeding. The recommended decision must include a summary of the findings, the parties' respective arguments, and support for the determination.

(2) Five-day comment period. Not later than five business days after receipt of the recommended decision, the parties shall submit written comments in response to the recommended decision, if any, to the hearing officer. The hearing officer shall not grant any extension of the stated time for responses to a recommended decision.

(3) Recommended decision to be transmitted to the Director. The hearing officer shall promptly forward the recommended decision, and written comments, if any, and the record to the Director for final determination.

(b) Decision of the Director. Within 60 days of the date of the hearing, or if the requestor waived a hearing the date fixed for the hearing, the Director will notify the entity-affiliated party in writing by registered mail of the disposition of his or her request for relief from the notice of suspension or prohibition or the order of removal or prohibition. The decision will state whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order removing such party from any participation in the affairs of the regulated entity will be rescinded or otherwise modified.

The decision will contain a brief statement of the basis for an adverse determination. The Director's decision is a final and non-appealable order.

(c) Effect of notice or order. A removal or prohibition by order shall remain in effect until terminated by the Director. A suspension or prohibition by notice remains in effect until the criminal charge is disposed of or until terminated by the Director.

(d) Reconsideration. A suspended or removed entity-affiliated party subsequently may petition the Director to reconsider the final decision any time after the expiration of a 12-month period from the date of the decision, but no such request may be made within 12 months of a previous petition for reconsideration. An entity-affiliated party must submit a petition for reconsideration in writing; the petition shall state the specific grounds for relief from the notice of suspension or order or removal and be supported by a memorandum and any other documentation materially relevant to the request for reconsideration. No hearing will be held on a petition for reconsideration, and the Director will inform the requestor of the disposition of the reconsideration request in a timely manner. A decision on a request for reconsideration shall not constitute an appealable order.

PART 1211—PROCEDURES

Subpart A—Definitions

Sec.
1211.1 Definitions.

Subpart B—Waivers, Approvals, Non-Objection Letters, and Regulatory Interpretations

1211.2 Waivers.
1211.3 Approvals.
1211.4 Non-Objection Letters.
1211.5 Regulatory Interpretations.
1211.6 Submission requirements.

Authority: 12 U.S.C. 4511(b), 4513(a), 4526.
Source: 79 FR 66665, Oct. 31, 2014, unless otherwise noted.

Subpart A—Definitions

§ 1211.1 Definitions.

As used in this part:
Approval means a written statement issued to a regulated entity or the Office of Finance approving a transaction, activity, or item that requires FHFA approval under a statute, rule, regulation, policy, or order.

Non-Objection Letter means a written statement issued to a regulated entity or the Office of Finance providing that FHFA does not object to a proposed transaction or activity.

Regulatory Interpretation means a written interpretation issued by the FHFA General Counsel with respect to the application of a statute, rule, regulation, or order to a proposed transaction or activity.

Requester means an entity that has submitted an application for a Waiver or Approval or a request for a Non-Objection Letter or Regulatory Interpretation.

Waiver means a written statement issued by the Director to a regulated entity or the Office of Finance that waives a provision, restriction, or requirement of this chapter (or of any Office of Federal Housing Enterprise Oversight or Federal Housing Finance Board regulation), or any required submission of information, not otherwise required by law, if such Waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination that application of the provision, restriction, or requirement of this chapter (or of any Office of Federal Housing Enterprise Oversight or Federal Housing Finance Board regulation), or any required submission of information, not otherwise required by law, in connection with a particular transaction or activity.
§ 1211.3 Approvals.

(a) Authority. The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, or their designees, may grant requests submitted by an Enterprise or by a Bank or the Office of Finance, respectively, seeking approval of any transaction, activity, or item that requires FHFA approval under any applicable statute, rule, regulation, policy, or order. The Director reserves the right to modify, rescind, or supersedes an Approval, with such action being effective only on a prospective basis.

(b) Requests. A regulated entity or the Office of Finance may apply for an Approval in accordance with § 1211.6, unless alternative application procedures are prescribed by the applicable statute, rule, regulation, policy, or order at issue.

(c) Reservation. The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, as appropriate, may, in their discretion, prescribe additional or alternative procedures for any application for approval of a transaction, activity, or item.

§ 1211.4 Non-Objection Letters.

(a) Authority. The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, or their designees, may, in their discretion, issue a Non-Objection Letter stating that FHFA does not object to a proposed transaction or activity for supervisory, regulatory, or policy reasons. The Director reserves the right to modify, rescind, or supersedes a Non-Objection Letter, with such action being effective only on a prospective basis.

(b) Requests. A regulated entity or the Office of Finance may request a Non-Objection Letter in accordance with § 1211.6.

(c) Information requirements. Each application or request shall be in writing. A Bank or the Office of Finance shall submit its filing to the Deputy Director for the Division of Federal Home Loan Bank Regulation, and an Enterprise shall submit its filing to the Deputy Director for Enterprise Regulation. Applications for regulatory interpretations shall be submitted also to the General Counsel.

(b) Authorization. An application for a Waiver or Approval and a request for a Non-Objection Letter or Regulatory Interpretation shall comply with the requirements of this section and shall pertain to regulatory matters relating to the Banks or Enterprises, and not to conservatorship matters.

§ 1211.6 Submission requirements.

Applications for a Waiver or Approval and requests for a Non-Objection Letter or Regulatory Interpretation shall comply with the requirements of this section and shall pertain to regulatory matters relating to the Banks or Enterprises, and not to conservatorship matters.

(1) Filing. Each application or request shall be in writing. A Bank or the Office of Finance shall submit its filing to the Deputy Director for the Division of Federal Home Loan Bank Regulation, and an Enterprise shall submit its filing to the Deputy Director for Enterprise Regulation. Applications for regulatory interpretations shall be submitted also to the General Counsel.

(2) Authorization. An application for a Waiver or Approval and a request for a Non-Objection Letter or Regulatory Interpretation shall be signed by the principal executive officer or other authorized executive officer of the regulated entity or by the chairperson of the board of directors or authorized executive officer of the Office of Finance, as appropriate.

(c) Information requirements. Each application or request shall contain:

(1) The name of the requester, and the name, title, business address, telephone number, and business electronic mail address, if any, of the official filing the application or request on its behalf;

(2) The name, business address, telephone number, and business electronic mail address, if any, of a contact person from whom FHFA staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the applicable
statutes or rules, regulations, policies, or orders to which the application or request relates;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to the application or request and identifying all relevant legal and factual issues;

(6) References to all other relevant authorities that the regulated entity or Office of Finance believes should be considered in evaluating the application or request, including the Authorizing Statutes, Safety and Soundness Act, FHFA rules, regulations, policies, orders, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements;

(7) References to any Waivers, Non-Objection Letters, Approvals, or Regulatory Interpretations issued in the past in response to circumstances similar to those surrounding the request or application;

(8) For any application or request involving interpretation of the Authorizing Statutes, Safety and Soundness Act, or FHFA regulations, a reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

(9) Any other non-duplicative, relevant supporting documentation; and

(10) A certification by a person with knowledge of the facts that the representations made in the application or request are accurate and complete. The following form of certification is sufficient for this purpose: "I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title]."

(d) Exceptions. In any given matter or class of matters, the Director, the Deputy Director for Federal Home Loan Bank Regulation, the Deputy Director for Enterprise Regulation, or the General Counsel, as appropriate, may accept an application or request that does not comply with the requirements of this section, for supervisory reasons or administrative efficiency.

(e) Withdrawal. Once filed, an application or request may be withdrawn only upon written request, and only if FHFA has not yet acted on the application or request.

PART 1212—POST-EMPLOYMENT RESTRICTION FOR SENIOR EXAMINERS

Subpart A [Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

Sec. 1212.1 Purpose and scope.
1212.2 Definitions.
1212.3 Post-employment restriction for senior examiners.
1212.4 Waiver.
1212.5 Penalties.


SOURCE: 74 FR 51075, Oct. 5, 2009, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

§ 1212.1 Purpose and scope.

This subpart sets forth a one-year post-employment restriction applicable to senior examiners of the Federal Housing Finance Agency (FHFA). This restriction is in addition to the post-employment restriction applicable to employees of FHFA under 12 U.S.C. 4523.

§ 1212.2 Definitions.

For purposes of subpart B of this part, the term:
Consultant means a person who works directly on matters for, or on behalf of, a regulated entity or the Office of Finance.
Director means the Director of FHFA or his or her designee.
Employee means an officer or employee of FHFA, including a special Government employee.
Federal Home Loan Bank or Bank means a Bank established under the Federal Home Loan Bank Act; the term "Federal Home Loan Banks" means, collectively, all the Federal Home Loan Banks.
Federal Housing Finance Agency

§ 1212.5

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

Regulated entity means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, 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 the Federal Home Loan Banks.


Senior examiner means an employee of FHFA who has been:
(1) Authorized by FHFA to conduct examinations or inspections on behalf of FHFA;
(2) Assigned continuing, broad and lead responsibility for examining a regulated entity or the Office of Finance; and
(3) Assigned responsibilities for examining, inspecting and supervising the regulated entity or the Office of Finance that—
(i) Represents a substantial portion of the employee’s assigned responsibilities; and
(ii) Requires the employee to interact routinely with officers or employees of the regulated entity or the Office of Finance.

§ 1212.3 Post-employment restriction for senior examiners.

(a) Prohibition. An employee of FHFA who serves as the senior examiner of a regulated entity or the Office of Finance for two or more months during the last 12 months of his or her employment with FHFA may not, within one year after leaving the employment of FHFA, knowingly accept compensation as an employee, officer, director, or consultant from a regulated entity or the Office of Finance unless the Director grants a waiver pursuant to §1212.4.

(b) Effective date. The post-employment restriction in paragraph (a) of this section shall not apply to any officer or employee of FHFA or any former officer or employee of FHFA who ceased to be an officer or employee of FHFA before November 4, 2009.

§ 1212.4 Waiver.

At the written request of a senior examiner or former senior examiner, the Director may waive the post-employment restriction in §1212.3 if he or she certifies, in writing, and on a case-by-case basis, that granting a waiver of such restriction does not affect the integrity of the supervisory program of FHFA.

§ 1212.5 Penalties.

(a) General. A senior examiner who, after leaving the employment of FHFA, violates the restriction set forth in §1212.3 shall be subject to one or both of the following penalties—
(1) An order:
(i) Removing the individual from office at the regulated entity or the Office of Finance or prohibiting the individual from further participation in the affairs of the relevant regulated entity or the Office of Finance for a period of up to five years; and
(ii) Prohibiting the individual from participating in the affairs of any regulated entity or the Office of Finance for a period of up to five years; and/or
(2) A civil money penalty of not more than $250,000.

(b) Other penalties. The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in §1212.3 also may be subject to other administrative, civil, or criminal remedies or penalties as provided in law.

(c) Procedural rights. The procedures applicable to actions under paragraph (a) of this section are those provided in the Safety and Soundness Act under section 1376, in connection with the imposition of a civil money penalty; under section 1377, in connection with a removal and prohibition order (12 U.S.C. 4636 and 4636a, respectively); and under any regulations issued by FHFA implementing such procedures.
PART 1213—OFFICE OF THE OMBUDSMAN

Sec.
1213.1 Purpose and scope.
1213.2 Definitions.
1213.3 Authorities and duties of the Ombudsman.
1213.4 Complaints and appeals from a regulated entity or the Office of Finance.
1213.5 Complaints from a person.
1213.6 No retaliation.
1213.7 Confidentiality.

AUTHORITY: 12 U.S.C. 4511(b)(2), 4517(i), and 4526.

SOURCE: 76 FR 7481, Feb 10, 2011, unless otherwise noted.

§ 1213.1 Purpose and scope.
(a) Purpose. The purpose of this part is to establish within FHFA the Office of the Ombudsman (Office) under section 1317(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(i)), as amended, and to set forth the authorities and duties of the Ombudsman.
(b) Scope. (1) This part applies to complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity or the Office of Finance regarding any matter relating to the regulation and supervision of such regulated entity or the Office of Finance by FHFA.
(2) The establishment of the Office does not alter or limit any other right or procedure associated with appeals, complaints, or administrative matters submitted by a person regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance under any other law or regulation.

§ 1213.2 Definitions.
For purposes of this part, the term: Business relationship means any existing or potential interaction between a person and a regulated entity or the Office of Finance for the provision of goods or services. The term business relationship does not include any interaction between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.
Director means the Director of FHFA or his or her designee.

FHFA means the Federal Housing Finance Agency.
Office of Finance means the Office of Finance of the Federal Home Loan Bank System.
Person means an organization, business entity, or individual that has a business relationship with a regulated entity or the Office of Finance, or that represents the interests of a person that has a business relationship with a regulated entity or the Office of Finance.
The term person does not include an individual borrower.
Regulated entity means the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, and any Federal Home Loan Bank.

§ 1213.3 Authorities and duties of the Ombudsman.
(a) General. The Office shall be headed by an Ombudsman, who shall consider complaints and appeals from any regulated entity, the Office of Finance, and any person that has a business relationship with a regulated entity or the Office of Finance regarding any matter relating to the regulation and supervision of such regulated entity or the Office of Finance by FHFA. In considering any complaint or appeal under this part, the Ombudsman shall:
(1) Conduct inquiries and submit findings of fact and recommendations to the Director concerning resolution of the complaint or appeal, and
(2) Act as a facilitator or mediator to advance the resolution of the complaint or appeal.
(b) Other duties. The Ombudsman shall:
(1) Establish procedures for carrying out the functions of the Office,
(2) Establish and publish procedures for receiving and considering complaints and appeals, and
(3) Report annually to the Director on the activities of the Office, or more frequently, as determined by the Director.

§ 1213.4 Complaints and appeals from a regulated entity or the Office of Finance.
(a) Complaints. (1) General. Any regulated entity or the Office of Finance...
may submit a complaint in accordance with procedures established by the Ombudsman.

(2) Matters subject to complaint. A regulated entity or the Office of Finance may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance by FHFA that is not subject to appeal or in litigation, arbitration, or mediation. The Ombudsman may further define what matters are subject to complaint.

(b) Appeals. (1) General. Any regulated entity or the Office of Finance may submit an appeal in accordance with procedures established by the Ombudsman.

(2) Matters subject to appeal. A regulated entity or the Office of Finance may submit an appeal regarding any final, written regulatory or supervisory conclusion, decision, or examination rating by FHFA. The Ombudsman may further define what matters are subject to appeal.

(3) Matters not subject to appeal. Matters for which there is an existing avenue of appeal or for which there is another forum for appeal; non-final decisions or conclusions; and matters in ongoing litigation, arbitration, or mediation, unless there has been a breakdown in the process, may not be appealed. Matters not subject to appeal include, but are not limited to, appointments of conservators or receivers, preliminary examination conclusions, formal enforcement decisions, formal and informal rulemakings, Freedom of Information Act appeals, final FHFA decisions subject to judicial review, and matters within the jurisdiction of the FHFA Inspector General. The Ombudsman may further define what matters are not subject to appeal.

(4) Effect of filing an appeal. An appeal under this section does not excuse a regulated entity or the Office of Finance from complying with any regulatory or supervisory decision while the appeal is pending. However, the Director, upon consideration of a written request, may waive compliance with a regulatory or supervisory decision during the pendency of the appeal.

§ 1213.5 Complaints from a person.

(a) General. Any person that has a business relationship with a regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman.

(b) Matters subject to complaint. A person may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance by FHFA that is not a matter in litigation, arbitration, or mediation. The Ombudsman may further define what matters are subject to complaints.

§ 1213.6 No retaliation.

Neither FHFA nor any FHFA employee may retaliate against a regulated entity, the Office of Finance, or a person for submitting a complaint or appeal under this part. The Ombudsman shall receive and address claims of retaliation. Upon receiving a complaint, the Ombudsman, in coordination with the Inspector General, shall examine the basis of the alleged retaliation. Upon completion of the examination, the Ombudsman shall report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

§ 1213.7 Confidentiality.

The Ombudsman shall ensure that safeguards exist to preserve confidentiality. If a party requests that information and materials remain confidential, the Ombudsman shall not disclose the information or materials, without approval of the party, except to appropriate reviewing or investigating officials, such as the Inspector General, or as required by law. However, the resolution of certain complaints (such as complaints of retaliation against a regulated entity or the Office of Finance) may not be possible if the identity of the party remains confidential. In such cases, the Ombudsman shall discuss with the party the circumstances limiting confidentiality.
PART 1214—AVAILABILITY OF NON-PUBLIC INFORMATION

§ 1214.1 Definitions.
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, Public Law 102–550, 122 Stat. 2654.

Disclosure means release or divulgence of information by any person to a person outside of FHFA.
FHFA employee means strictly for the purpose of this regulation, any person employed by FHFA, including any current or former officer, intern, agent, contractor or contractor personnel, or detailee of FHFA, and any person employed by the FHFA Office of the Inspector General (FHFA–OIG), including any current or former officer, intern, agent, contractor or contractor personnel, or detailee of FHFA–OIG.

Non-public information means information that FHFA has not made public that is created, obtained by, or communicated to an FHFA employee in connection with the performance of official duties, regardless of who is in possession of the information. This includes confidential supervisory information as defined above. It does not include information or documents that FHFA has disclosed under the Freedom of Information Act (5 U.S.C. 552; 12 CFR part 1202), or Privacy Act of 1974 (5 U.S.C. 552a; 12 CFR part 1204). It also does not include specific information or documents that were previously disclosed to the public at large or information or documents that are customarily furnished to the public at large in the course of the performance of official FHFA duties, including but not limited to: Disclosures made by the Director pursuant to 24 CFR subpart F, and any FHFA successor rules; the annual report that FHFA submits to Congress pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), press releases, FHFA blank forms, and materials published in the Federal Register.

Person means individual or business entity.

§ 1214.2 Purpose and scope.
(a) Purpose. The purpose of this part is to control the dissemination of non-public information, which includes confidential supervisory information, and maintain its controlled, sensitive, privileged, or proprietary nature, as appropriate.
(b) Scope. This part imposes a broad-based prohibition against unauthorized disclosure of any non-public information. This part does not supersede the regulations at 12 CFR part 1202 (governing disclosure under the Freedom of Information Act); 12 CFR part 1204 (governing disclosure under the Privacy Act); and the sections describing permitted disclosures in any FHFA rules on Federal Home Loan Bank Information Sharing or on the FHFA Public Use Database.
(c) These provisions also do not supersede or otherwise alter the rights or liabilities created by 5 U.S.C. 7211 (governing disclosures to Congress); 5 U.S.C. 2302(b)(8) (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); or 12
§ 1214.3 General rule.

(a) In general, Non-FHFA Employees. The Director makes available to each regulated entity a copy of FHFA’s report of examination of that regulated entity. The report of examination and all other confidential supervisory information is the property of FHFA and is provided to the regulated entity for its confidential internal use only. Under no circumstance shall any person in possession or control of confidential supervisory information make public or disclose, in any manner, the confidential supervisory information, or any portion of the contents thereof, except as authorized in writing by the Director.

(b) In general, FHFA Employees. Except as authorized in writing by the Director, no FHFA employee in possession or control of non-public information may disclose or permit the use or disclosure of such information in any manner or for any purpose.

(c) Persons possessing confidential supervisory information. All confidential supervisory information, for which the Director authorizes disclosure, remains the property of FHFA and may not be used or disclosed for any purpose other than that authorized under this part without the prior written permission of the Director.

(d) No Waiver. FHFA’s disclosure of non-public information to any person does not constitute a waiver by FHFA of any privilege or FHFA’s right to control, supervise, or impose limitations on, the subsequent use and disclosure of the non-public information.

(e) Penalties, Confidential Supervisory Information. Any person that discloses or uses confidential supervisory information except as authorized under this part may be subject to the penalties provided in 18 U.S.C. 641, other applicable laws, and appropriate administrative, enforcement, or disciplinary proceedings.

§ 1214.4 Exceptions.

(a) FHFA Employees. Current FHFA employees may disclose or permit the disclosure of non-public information to another FHFA employee or regulated entity or the Office of Finance, when necessary and appropriate, for the performance of their official duties.

(b) Regulated Entity Agents and Consultants. (1) When necessary and appropriate for regulated entity or Office of Finance business purposes, a regulated entity, the Office of Finance, or any director, officer, or employee thereof may disclose confidential supervisory information to any person currently engaged by the regulated entity or the Office of Finance, as officer, director, employee, attorney, auditor, or independent auditor (“regulated entity agents”).

(2) A regulated entity, the Office of Finance, or a director, officer, employee, or agent thereof, also may disclose confidential supervisory information to a consultant under this paragraph if the consultant is under a written contract to provide services to the regulated entity or the Office of Finance and the consultant has agreed in writing:

(i) To abide by the prohibition on the disclosure of confidential supervisory information contained in this section; and

(ii) That it will not use the confidential supervisory information for any purposes other than those stated in its contract to provide services to the regulated entity or the Office of Finance.

(c) Law Enforcement Proceedings. Notwithstanding the general prohibition of disclosure of non-public information, to the minimum extent required by the Inspector General Act, Public Law 95–452, 92 Stat. 1101 (1978), FHFA’s Office of Inspector General is permitted under this section to disclose non-public FHFA information without Director approval.
Privilege. FHFA retains all privilege claims for non-public information shared under §1214.4, including, but not limited to attorney-client, attorney-work product, deliberative process, and examination privileges.

PART 1215—PRODUCTION OF FHFA RECORDS, INFORMATION, AND EMPLOYEE TESTIMONY IN THIRD-PARTY LEGAL PROCEEDINGS

§ 1215.1 Scope and purpose.
(a) This regulation sets forth the policies and procedures that must be followed in order to compel an employee of the Federal Housing Finance Agency (FHFA) to produce records or information, or to provide testimony relating to the employee’s official duties, in the context of a legal proceeding. Parties seeking records, information, or testimony must comply with these requirements when submitting demands or requests:
(b) FHFA intends these provisions to:
(1) Promote economy and efficiency in its programs and operations;
(2) Minimize the possibility of involving FHFA in controversial issues not related to its mission and functions;
(3) Maintain FHFA’s impartiality;
(4) Protect employees from being compelled to serve as involuntary witnesses for wholly private interests, or as inappropriate expert witnesses regarding current law or the activities of FHFA; and
(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:
Federal Housing Finance Agency

§ 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

(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 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
§ 1215.5 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 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;
(k) The demand or request pertains to documents that were produced by another agency;
(l) The demand or request complies with all other applicable rules;
(m) The demand or request is sufficiently specific to be answered;
(n) The relevance of the records, information, or testimony to the purposes for which they are sought, and for which they may be used for substantive evidence;
(o) Production of the records, information, or employee testimony may implicate a substantial government interest; and
(p) Any other good cause.

§ 1215.7 Serving demands and submitting requests.

(a) All demands and requests must be in writing.

(b) Demands must be served and requests must be submitted to the FHFA General Counsel at the following address: General Counsel, Federal Housing Finance Agency, Constitution Center, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219.

(c) Demands must not be served upon, nor requests submitted to any regulated entity for records, information, or testimony regardless of whether the records, information, or testimony sought are in the possession of, or known by, the regulated entity. If a regulated entity receives a request or demand for records, information, or testimony, the regulated entity must immediately notify the General Counsel and provide FHFA an opportunity to object to the demand or request before responding to the demand or request. Submitting a demand or request to a regulated entity may result in rejection of the demand or request under §1215.9.

(d) If an employee receives a request or demand that is not properly routed through FHFA’s General Counsel, as
required under this section, the employee must promptly notify the General Counsel. An employee’s failure to notify the General Counsel is grounds for discipline or other adverse action.

§ 1215.8 Timing and form of demands and requests.

(a) A party seeking records, information, or testimony must submit a request and receive a rejection before making a demand for records, information, or testimony.

(b) A demand or request to FHFA must include a detailed description of the basis for the demand or request and comply with the requirements in §1215.7.

(c) Demands and requests must be submitted at least 60 days in advance of the date on which the records, information, or testimony is needed. Exceptions to this requirement may be granted upon a showing of compelling need.

(d) A demand or request for testimony also must include an estimate of the amount of time that the employee will need to devote to the process of testifying (including anticipated travel time and anticipated duration of round trip travel), plus a showing that no document or the testimony of non-agency persons, including retained experts, could suffice in lieu of the employee’s testimony.

(e) Upon submitting a demand or request seeking employee testimony, the requesting party must notify all other parties to the legal proceeding.

(f) After receiving notice of a demand or request for testimony, but before the testimony occurs, a party to the legal proceeding who did not join in the demand or request and who wishes to question the witness beyond the scope of the testimony sought must submit a separate demand or request within 60 days of receiving the notice required under paragraph (e) of this section and must then comply with paragraph (c) of this section.

(g) Every demand or request must include the legal proceeding’s caption and docket number, the forum; the name, address, phone number, State Bar number, and, if available, electronic mail address of counsel to all parties to the legal proceeding (in the case of pro-se parties, substitute the name, address, phone number, and electronic mail address of the pro-se party); and a statement of the demanding or requesting party’s interest in the case. In addition, the demanding or requesting party must submit a clear and concise written statement that includes: a summary of the legal and factual issues in the proceeding and a detailed explanation as to how the records, information or testimony will contribute substantially to the resolution of one or more specially identified issues in the legal proceeding. A copy of the complaint or charging document may accompany—but must not be substituted for—the required statement.

§ 1215.9 Failure to meet this part’s requirements.

FHFA may oppose any demand or request that does not meet the requirements set forth in this part.

§ 1215.10 Processing demands and requests.

(a) The Director will review every demand or request received and, in accordance with this regulation, determine whether, and under what conditions, to authorize an employee to produce records, information, or testimony.

(b) The Director will process demands and requests in the order in which they are received. The Director will ordinarily respond within 60 days from the date that the agency receives all information necessary to evaluate the demand or request. However, the time for response will depend upon the scope of the demand or request. The Director may respond outside of the 60-day period:

(1) Under exigent or unusual circumstances; or

(2) When FHFA must receive and process records or information in the possession, custody, or control of a third party.

(c) The Director may confer with counsel to parties to a legal proceeding about demands or requests made pursuant to this part. The conference may be ex-parte. Failure to confer in good faith, in order to enable the Director to
§ 1215.11 FHFA determination.

(a) The Director makes FHFA’s determinations regarding demands and requests.

(b) The Director will notify the demanding or requesting party of FHFA’s determination, the reasons for the approval or rejection of the demand or request, and any conditions that the Director may impose on the release of records, information, or testimony.

§ 1215.12 Restrictions that apply to testimony.

(a) The Director may impose conditions or restrictions on testimony, including but not limited to limiting the scope of testimony or requiring the demanding or requesting party and other parties to the legal proceeding to agree that the testimony transcript will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The Director may also require a copy of the transcript of testimony to be provided to FHFA at the demanding or requesting party’s expense.

(b) The Director may offer an employee’s written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Director, the employee must not:

(1) Disclose confidential or privileged information; or
(2) Testify as an expert or opinion witness with regard to any matter arising out of the employee’s official duties or FHFA’s mission or functions. This provision does not apply to requests from the United States for expert or opinion testimony.

(d) The Director may assign FHFA Counsel to be present for an employee’s testimony.

§ 1215.13 Restrictions that apply to records and information.

(a) The Director may impose conditions or restrictions on the release of records and information, including but not limited to requiring that parties to the legal proceeding obtain a protective order or execute a confidentiality agreement to limit access and further disclosure, or that parties take other appropriate steps to comply with applicable privacy requirements. The terms of a protective order or confidentiality agreement must be acceptable to the Director. In cases where protective orders or confidentiality agreements have already been executed, the Director may condition the release of records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Director so determines, original agency records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their status as original records, nor are they to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes.

(c) The scope of permissible production is limited to that set forth in the prior, written authorization granted by the Director.

(d) If records or information are produced in connection with a legal proceeding, the demanding or requesting party must:

(1) Promptly notify all other parties to the legal proceeding that the records or information are FHFA records or information and are subject to this part and any applicable confidentiality agreement or protective order;
(2) Provide copies of any confidentiality agreement or protective order to all other parties; and
(3) Retrieve the records or information from the court or other competent authority’s file when the court or other competent authority no longer requires
the records or information and certify that every party covered by a confidentiality agreement, protective order, or other privacy protection has destroyed all copies of the records or information.

§ 1215.14 Procedure in the event of an adverse FHFA determination.

(a) Procedure for seeking reconsideration of FHFA’s determination. A demanding or requesting party seeking reconsideration of FHFA’s rejection of a demand or request, or of any restrictions on receiving records, information, or testimony, may seek reconsideration of the rejection or restrictions as follows:

(1) Notice of Intention to Petition for Reconsideration. The aggrieved demanding or requesting party may seek reconsideration by filing a written Notice of Intention to Petition for Reconsideration (Notice) within 10 business days of the date of FHFA’s determination. The Notice must identify the petitioner, the determination for which reconsideration is being petitioned, and any dates (such as deposition, hearing, or court dates) that are significant to petitioner. The Notice must be served in accordance with §1215.7.

(2) Petition for Reconsideration. Within five business days of filing Notice, the petitioner must file a Petition for Reconsideration (Petition) in accordance with §1215.7. The Petition must contain a clear and concise statement of the basis for the reconsideration with supporting authorities. Determinations about petitions for reconsideration are within the discretion of the FHFA Director, and are final.

(b) Prerequisite to judicial review. Pursuant to section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to FHFA for reconsideration of a final determination made under the authority of this part is a prerequisite to judicial review.

§ 1215.15 Conflicting court order.

Notwithstanding FHFA’s rejection of a demand for records, information, or testimony, if a court or other competent authority orders an FHFA employee to comply with the demand, the employee must promptly notify FHFA’s General Counsel of the order, and the employee must respectfully decline to comply, citing United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). An employee’s failure to notify the General Counsel of a court or other authority’s order is grounds for discipline or other adverse action.

§ 1215.16 Fees.

(a) The Director may condition the production of records, information, or an employee’s appearance on advance payment of reasonable costs to FHFA, which may include but are not limited to those associated with employee search time, copying, computer usage, and certifications.

(b) Witness fees will include fees, expenses, and allowances prescribed by the rules applicable to the particular legal proceeding. If no fees are prescribed, FHFA will base fees on the rule of the federal district court closest to the location where the witness will appear. Such fees may include but are not limited to time for preparation, travel, and attendance at the legal proceeding.

§ 1215.17 Responses to demands served on nonemployees.

(a) FHFA confidential supervisory information is the property of FHFA, and is not to be disclosed to any person without the Director’s prior written consent.

(b) If any person in possession of FHFA confidential supervisory information, is served with a demand in a legal proceeding directing that person to produce FHFA’s confidential supervisory information or to testify with respect thereto, such person shall immediately notify the General Counsel of such service, of the testimony requested and confidential supervisory information described in the demand, and of all relevant facts. Such person shall also object to the production of such confidential supervisory information on the basis that the confidential supervisory information is the property of FHFA and cannot be released without FHFA’s consent and that production must be sought from FHFA following the procedures set forth in §§1215.7, 1215.8, and 1215.14 of this part.
§ 1215.18 Inspector General.

Notwithstanding the general prohibition of disclosure of records and information, to the minimum extent required by the Inspector General Act, Public Law 9–452 (1978), FHFA’s Office of Inspector General is permitted under this section to disclose records and information and permit FHFA–OIG employee testimony without Director approval.

PART 1217—PROGRAM FRAUD CIVIL REMEDIES ACT

Sec. 1217.1 Purpose and scope.
1217.2 Definitions.
1217.3 Basis for civil penalties and assessments.
1217.4 Investigation.
1217.5 Request for approval by the Department of Justice.
1217.6 Notice.
1217.7 Response.
1217.8 Statute of limitations.
1217.9 Hearings.
1217.10 Settlements.

SOURCE: 81 FR 43034, July 1, 2016, unless otherwise noted.

§ 1217.1 Purpose and scope.

(a) Purpose. This part:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to FHFA or to its agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. Hearings under this part shall be conducted in accordance with the Administrative Procedure Act pursuant to part 1209, subpart C, of this chapter.

(b) Scope. This part applies only to persons who make, submit, or present or cause to be made, submitted, or presented false, fictitious, or fraudulent claims or written statements to FHFA or to those acting on its behalf in connection with FHFA employment matters and FHFA contracting activities.

It does not apply to false claims or statements made in connection with matters or activities related to FHFA’s supervisory, regulatory, enforcement, conservatorship, or receivership responsibilities, as other civil and administrative actions available to FHFA to redress fraud in such areas provide for remedies that are equal to or exceed those available through this part.

§ 1217.2 Definitions.

As used in this part:

Ability to pay is determined based on a review of the respondent’s resources available both currently and prospectively, from which FHFA could ultimately recover the total penalty, and as appropriate, assessment, which may be predicted based on historical evidence.

Assessment means a monetary penalty that is in addition to a civil penalty and may be imposed if FHFA has made any payment, transferred property, or provided services for a claim that is determined to be in violation of paragraph (a)(1) of §1217.3. An assessment may not exceed an amount that is twice the amount of the claim or portion of the claim determined to be in violation of paragraph (a)(1) of §1217.3. A civil penalty other than an assessment may be imposed whether or not FHFA has made a payment, transferred property, or provided services in response to the false claim or statement.

Benefit means anything of value, including, but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, or status.

Claim means any request, demand, or submission:

(1) Made to FHFA for property, services, or money (including money representing benefits);

(2) Made to a recipient of property, services, or money from FHFA or to a party to a contract with FHFA:

(i) For property or services, if FHFA:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or...
§ 1217.3 Basis for civil penalties and assessments.

(a) False, fictitious or fraudulent claims. (1) A civil penalty of not more than $10,781 may be imposed upon a person who makes a claim to FHFA for property, services, or money where the person knows or has reason to know that the claim:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by a written statement that:

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Omits a material fact and, as a result of the omission, is false, fictitious, or fraudulent, where the person making, presenting, or submitting such statement has a duty to include such material fact; or

(ii) For the payment of money (including money representing benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to FHFA, which has the effect of decreasing an obligation to pay or account for property, services, or money.

Investigating official means the FHFA Inspector General, or an officer or employee of the FHFA Office of Inspector General designated by the FHFA Inspector General.

Knows or has reason to know. (1) For purposes of establishing liability under 31 U.S.C. 3802 and this part, means that a person, with respect to a claim or statement:

(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(iii) Acts in reckless disregard of the truth or falsity of the claim or statement.

(2) No proof of specific intent to defraud is required for purposes of establishing liability under 31 U.S.C. 3802 or this part.

Makes a claim or statement includes making, presenting, or submitting the claim or statement and causing the claim or statement to be made, presented, or submitted.

Notice means the charging document served by FHFA to commence an administrative proceeding to impose a civil penalty and, if appropriate, an assessment under chapter 38 of subtitle III of title 31, U.S.C., and this part.

Person means any individual, partnership, corporation, association, or private organization.

Presiding officer means an administrative law judge appointed under 5 U.S.C. 3105 or detailed to FHFA under 5 U.S.C. 3344.

Reasonable prospect of collecting an appropriate amount of penalties and assessments is determined based on a generalized analysis made by the reviewing official, based on the limited information available in the report of investigation for purposes of determining whether the allocation of FHFA’s resources to any particular action is appropriate.

Report of investigation means a report containing the findings and conclusions of an investigation under chapter 38 of subtitle III of title 31, U.S.C., by the investigating official, as described in §1217.4.

Respondent means any person alleged to be liable for a civil penalty or assessment under §1217.3.

Reviewing official means the General Counsel of FHFA, as so designated by the Director pursuant to 31 U.S.C. 3801(a)(8)(A).

Statement means, unless the context indicates otherwise, any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for) a contract with, or a bid or proposal for a contract with, or benefit from, FHFA or any State, political subdivision of a State, or other party, if FHFA provides any portion of the money or property under such contract or benefit, or if FHFA will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such benefit.
§ 1217.4 12 CFR Ch. XII (1–1–17 Edition)

(iii) Is for payment for the provision of property or services to FHFA which the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim for purposes of this part.

(3) A claim shall be considered made to FHFA, a recipient, or party when the claim is actually made to an agent, fiscal intermediary, or other entity, acting for or on behalf of FHFA, the recipient, or the party.

(4) Each claim for property, services, or money is subject to a civil penalty, without regard to whether the property, services, or money actually is delivered or paid.

(5) There is no liability under this part if the amount of money or value of property or services claimed exceeds $150,000 as to each claim that a person submits. For purposes of this paragraph (a), a group of claims submitted simultaneously as part of a single transaction shall be considered a single claim.

(6) If the FHFA has made any payment, transferred property, or provided services for a claim, then FHFA may make an assessment against a person found liable in an amount of up to twice the amount of the claim or portion of the claim that is determined to be in violation of paragraph (a)(1) of this section. This assessment is in addition to the amount of any civil penalty imposed.

(b) False, fictitious or fraudulent statements. (1) A civil penalty of up to $10,781 may be imposed upon a person who makes a written statement to FHFA with respect to a claim, contract, bid or proposal for a contract, or benefit from FHFA that:

(i) The person knows or has reason to know:

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Omits a material fact and is false, fictitious, or fraudulent as a result of such omission, where the person making, presenting, or submitting such statement has a duty to include such material fact; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to FHFA when the statement is actually made to an agent, fiscal intermediary, or other entity acting for or on behalf of FHFA.

(c) Joint and several liability. A civil penalty or assessment may be imposed jointly and severally if more than one person is determined to be liable.

§ 1217.4 Investigation.

(a) General. FHFA may initiate an action under chapter 38 of subtitle III of title 31, U.S.C., and this part against a respondent only upon an investigation by the investigating official.

(b) Subpoena. Pursuant to 31 U.S.C. 3804(a), the investigating official may require by subpoena the production of records and other documents. The subpoena shall state the authority under which it is issued, identify the records sought, and name the person designated to receive the records. The recipient of the subpoena shall provide a certification that the documents sought have been produced, that the documents are not available and the reasons they are not available, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) Investigation report. If the investigating official concludes that an action under chapter 38 of subtitle III of title 31, U.S.C., and this part may be warranted, the investigating official shall prepare a report containing the findings and conclusions of the investigation, including:

(1) A description of the claim or statement at issue;

(2) The evidence supporting the allegations;

(3) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of §1217.3; and

(4) Any exculpatory or mitigating circumstances that may relate to the claim or statement.

(d) Referrals to the Attorney General. The investigating official may refer allegations directly to the Department of
Justice for civil relief under other applicable law, as appropriate, or may defer or postpone submitting a report to the reviewing official to avoid interference with a criminal investigation or prosecution.

§ 1217.5 Request for approval by the Department of Justice.

(a) General. If the reviewing official determines that the report of investigation supports an action under this part, the reviewing official must submit a written request to the Department of Justice for approval to issue a notice under §1217.6.

(b) Content of request. A request under this section shall include:

(1) A description of the claim or statement at issue;

(2) The evidence supporting the allegations;

(3) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of §1217.3;

(4) Any exculpatory or mitigating circumstances that may relate to the claim or statement; and

(5) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Determining there is a reasonable prospect of collecting an appropriate amount of penalties and assessments is separate from determining ability to pay, and may not be considered in determining the amount of any penalty or assessment in any particular case.

§ 1217.6 Notice.

(a) Commencement of action; notice. Upon obtaining approval from the Department of Justice, the reviewing official may commence an action to establish liability of the respondent under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.) and this part. To commence an action, the reviewing official must issue a notice to the respondent of the allegations of liability against the respondent. The notice shall be mailed, by registered or certified mail, or shall be delivered through such other means by which delivery may be confirmed.

(b) Notice contents. The notice required under this section shall include:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the claim or statement at issue, and the reasons why liability arises from that claim or statement;

(2) A statement that the required approval to issue the notice was received from the Department of Justice;

(3) The amount of the penalty and, if applicable, any assessment for which the respondent may be held liable;

(4) A statement that the respondent may request a hearing by submitting a written response to the notice;

(5) The addresses to which a response must be sent in accordance with §1209.15 of this chapter;

(6) A statement that failure to submit an answer within 30 days of receipt of the notice may result in the imposition of the maximum amount of penalties and assessments sought, without right of appeal;

(7) A statement that the respondent must preserve and maintain all documents and data, including electronically stored data, within the possession or control of the respondent that may relate to the allegations; and

(8) A copy of this part 1217 and part 1209, subpart C of this chapter.

(c) Obligation to preserve documents. Upon the issuance of a notice under this section, FHFA and the respondent shall each preserve and maintain all documents and data, including electronically stored data, within their respective possession or control that may relate to the allegations in the complaint.

§ 1217.7 Response.

(a) General. (1) To obtain a hearing, the respondent must file a written response to a notice under §1217.6:

(i) In accordance with §1209.24 of this chapter; and

(ii) Not later than 30 days after the date of service of the notice.

(2) A timely filed response to a notice under §1217.6 shall be deemed to be a request for a hearing.

(3) A response to a notice under §1217.6 must include:

(i) The admission or denial of each allegation of liability made in the notice;
§ 1217.8 Statute of limitations.

The statute of limitations for commencing a hearing under this part shall be tolled:

(a) If the hearing is commenced in accordance with 31 U.S.C. 3803(d)(2)(B) within 6 years after the date on which the claim or statement is made; or

(b) If the parties agree to such tolling.

§ 1217.9 Hearings.

(a) General. Hearings under this part shall be conducted in accordance with the procedures in subpart C of part 1209 of this chapter, governing actions in accordance with subchapter II of chapter 5, U.S.C. (commonly known as the Administrative Procedure Act).

(b) Factors to consider in determining amount of penalties and assessments. In determining an appropriate amount of any civil penalty and, if appropriate, any assessment, the presiding officer and, upon appeal, the Director or designee thereof, shall consider and state in his or her opinion any mitigating or aggravating circumstances. The amount of penalties and assessments imposed shall be based on the presiding officer’s and the Director’s or designee’s consideration of evidence in support of one or more of the following factors:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent’s culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the actual loss to FHFA as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;

(6) The relationship of the civil penalties to the amount of the loss to FHFA;

(7) The potential or actual impact of the misconduct upon public health or safety or public confidence in the management of FHFA programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent’s practices fostered or attempted to preclude the misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent’s sophistication with respect to it, including the extent of the respondent’s prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the respondent and others from engaging in the same or similar misconduct;

(17) The respondent’s ability to pay; and

(18) Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement.

(c) Stays ordered by the Department of Justice. If at any time the Attorney
§ 1217.10 Settlements.

(a) General. The reviewing official, on behalf of FHFA, and the respondent may enter into a settlement agreement under §1209.20 of this chapter at any time prior to the issuing of a notice of final decision under §1209.55 of this chapter.

(b) Failure to comply. Failure of the respondent to comply with a settlement agreement shall be sufficient cause for resuming an action under this part, or for any other judicial or administrative action.
PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

Sec.
1221.1 Authority, purpose, scope, exemptions and compliance dates.
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APPENDIX B TO PART 1221—MARGIN VALUES FOR CASH AND ELIGIBLE NONCASH MARGIN COLLATERAL


SOURCE: 80 FR 74913, Nov. 30, 2015, unless otherwise noted.

§ 1221.1 Authority, purpose, scope, exemptions and compliance dates.


(b) Purpose. Section 4(a) of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require FHFA to establish capital and margin requirements for any regulated entity that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statute’s requirements.

(c) Scope. This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the related compliance date set forth in paragraph (e) of this section. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

(d) Exemptions—(1) Swaps. The requirements of this part (except for §45.12) shall not apply to a non-cleared swap if the counterparty:

(i) Qualifies for an exception from clearing under section 2(h)(7)(A) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(A)) and implementing regulations;

(ii) Qualifies for an exemption from clearing under a rule, regulation, or order that the Commodity Futures Trading Commission issued pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act of 1936 (7 U.S.C. 6(c)(1)) concerning cooperative entities that would otherwise be subject to the requirements of section 2(h)(1)(A) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(1)(A)); or

(iii) Satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(D)) and implementing regulations.

(2) Security-based swaps. The requirements of this part (except for §1221.12) shall not apply to a non-cleared security-based swap if the counterparty:

(i) Qualifies for an exception from clearing under section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(1)) and implementing regulations;

Compliance dates. Covered swap entities shall comply with the minimum margin requirements of this part on or before the following dates for non-cleared swaps and non-cleared security-based swaps entered into on or after the following dates:

1. September 1, 2016 with respect to the requirements in §1221.3 for initial margin and §1221.4 for variation margin for any non-cleared swaps and non-cleared security-based swaps, where both:
   (i) The covered swap entity combined with all its affiliates; and
   (ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2016 that exceeds $3 trillion, where such amounts are calculated only for business days; and
   (iii) In calculating the amounts in paragraphs (e)(1)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

2. March 1, 2017 with respect to the requirements in §1221.4 for variation margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

3. September 1, 2017 with respect to the requirements in §1221.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:
   (i) The covered swap entity combined with all its affiliates; and
   (ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2017 that exceeds $1.5 trillion, where such amounts are calculated only for business days; and
   (iii) In calculating the amounts in paragraphs (e)(3)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

4. September 1, 2018 with respect to the requirements in §1221.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:
   (i) The covered swap entity combined with all its affiliates; and
   (ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2018 that exceeds $0.75 trillion, where such amounts are calculated only for business days; and
   (iii) In calculating the amounts in paragraphs (e)(4)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

5. September 1, 2019 with respect to the requirements in §1221.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:
   (i) The covered swap entity combined with all its affiliates; and
   (ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2019 that exceeds $0.75 trillion, where such amounts are calculated only for business days; and
   (iii) In calculating the amounts in paragraphs (e)(5)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.
daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(6) September 1, 2020 with respect to the requirements in §1221.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

(f) Once a covered swap entity must comply with the margin requirements for non-cleared swaps and non-cleared security-based swaps with respect to a particular counterparty based on the compliance dates in paragraph (e) of this section, the covered swap entity shall remain subject to the requirements of this part with respect to that counterparty.

(g)(1) If a covered swap entity’s counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to stricter margin requirements under this part (such as if the counterparty’s status changes from a financial end user without material swaps exposure to a financial end user with material swaps exposure), then the covered swap entity shall comply with the stricter margin requirements for any non-cleared swap or non-cleared security-based swap entered into with that counterparty after the counterparty changes its status.

(2) If a covered swap entity’s counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to less strict margin requirements under this part (such as if the counterparty’s status changes from a financial end user with material swaps exposure to a financial end user without material swaps exposure), then the covered swap entity may comply with the less strict margin requirements for any non-cleared swap or non-cleared security-based swap entered into with that counterparty after the counterparty changes its status as well as for any outstanding non-cleared swap or non-cleared security-based swap entered into after the applicable compliance date in paragraph (e) of this section and before the counterparty changed its status.

§ 1221.2 Definitions.

Affiliate. A company is an affiliate of another company if:

(1) Either company consolidates the other on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards;

(2) Both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards;

(3) For a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied; or

(4) FHFA has determined that a company is an affiliate of another company, based on the FHFA’s conclusion that either company provides significant support to, or is materially subject to the risks or losses of, the other company.


Broker has the meaning specified in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

Business day means any day other than a Saturday, Sunday, or legal holiday.

Clearing agency has the meaning specified in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)).

Company means a corporation, partnership, limited liability company, business trust, special purpose entity, association, or similar organization.

Counterparty means, with respect to any non-cleared swap or non-cleared security-based swap to which a person is a party, each other party to such non-cleared swap or non-cleared security-based swap.
Covered swap entity means any regulated entity that is a swap entity or any other entity that FHFA determines.

Cross-currency swap means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

Currency of settlement means a currency in which a party has agreed to discharge payment obligations related to a non-cleared swap, a non-cleared security-based swap, a group of non-cleared swaps, or a group of non-cleared security-based swaps subject to a master agreement at the regularly occurring dates on which such payments are due in the ordinary course.

Day of execution means the calendar day at the time the parties enter into a non-cleared swap or non-cleared security-based swap, provided:

(1) If each party is in a different calendar day at the time the parties enter into the non-cleared swap or non-cleared security-based swap, the day of execution is deemed the latter of the two dates; and

(2) If a non-cleared swap or non-cleared security-based swap is:

(i) Entered into after 4:00 p.m. in the location of a party; or

(ii) Entered into on a day that is not a business day in the location of a party, then the non-cleared swap or non-cleared security-based swap is deemed to have been entered into on the immediately succeeding day that is a business day for both parties, and both parties shall determine the day of execution with reference to that business day.

Dealer has the meaning specified in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)).

Depositary institution has the meaning specified in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Derivatives clearing organization has the meaning specified in section 1a(15) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(15)).

Eligible collateral means collateral described in §1221.6.

Eligible master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of the defaulter is a net creditor under the agreement); and
(4) A covered swap entity that relies on the agreement for purposes of calculating the margin required by this part must:

(i) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(A) The agreement meets the requirements of paragraph (2) of this definition; and

(B) In the event of a legal challenge (including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(ii) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition.

Financial end user means:

(1) Any counterparty that is not a swap entity and that is:

(i) A bank holding company or an affiliate thereof; a savings and loan holding company; a U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153; or a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323); and

(ii) A depository institution; a foreign bank; a Federal credit union or State credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) & (6)); an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H)); and

(iii) An entity that is state-licensed or registered as:

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; except entities registered or licensed solely on account of financing the entity’s direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler’s check issuer;

(C) A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4502(20)) or any entity for which the Federal Housing Finance Agency or its successor is the primary federal regulator;

(D) Any institution chartered in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 et seq., that is regulated by the Farm Credit Administration;

(E) A securities holding company; a broker or dealer; an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–53(a));

(F) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 (17 CFR 270.3a–7) of the U.S. Securities and Exchange Commission;

(G) A commodity pool, a commodity pool operator, or a commodity trading advisor as defined, respectively, in section 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(10), 1a(11), and 1a(12)); a floor broker, a floor trader, or
introducing broker as defined, respectively, in 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28));

(ix) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(x) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

(xi) An entity, person or arrangement that is, or holds itself out as being, an entity, person, or arrangement that raises money from investors, accepts money from clients, or uses its own money primarily for the purpose of investing or trading or facilitating the investing or trading in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets; or

(xii) An entity that would be a financial end user described in paragraph (1) of this definition or a swap entity, if it were organized under the laws of the United States or any State thereof.

(2) The term “financial end user” does not include any counterparty that is:

(i) A sovereign entity;

(ii) A multilateral development bank;

(iii) The Bank for International Settlements;

(iv) An entity that is exempt from the definition of financial entity pursuant to section 2(h)(7)(C)(i) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(C)(i)) and implementing regulations; or


Foreign bank means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States.

Foreign exchange forward has the meaning specified in section 1a(24) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(24)).

Foreign exchange swap has the meaning specified in section 1a(25) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(25)).

Initial margin means the collateral as calculated in accordance with §1221.8 that is posted or collected in connection with a non-cleared swap or non-cleared security-based swap.

Initial margin collection amount means:

(1) In the case of a covered swap entity that does not use an initial margin model, the amount of initial margin with respect to a non-cleared swap or non-cleared security-based swap that is required under appendix A of this part; and

(2) In the case of a covered swap entity that uses an initial margin model pursuant to §1221.8, the amount of initial margin with respect to a non-cleared swap or non-cleared security-based swap that is required under the initial margin model.

Initial margin model means an internal risk management model that:

(1) Has been developed and designed to identify an appropriate, risk-based amount of initial margin that the covered swap entity must collect with respect to one or more non-cleared swaps or non-cleared security-based swaps to which the covered swap entity is a party; and

(2) Has been approved by FHFA pursuant to §1221.8.

Initial margin threshold amount means an aggregate credit exposure of $50 million resulting from all non-cleared swaps and non-cleared security-based swaps between a covered swap entity and its affiliates, and a counterparty and its affiliates. For purposes of this calculation, an entity shall not count a swap or security-based swap that is exempt pursuant to §1221.1(d).

Major currency means:

(1) United States Dollar (USD);

(2) Canadian Dollar (CAD);

(3) Euro (EUR);

(4) United Kingdom Pound (GBP);
(5) Japanese Yen (JPY);
(6) Swiss Franc (CHF);
(7) New Zealand Dollar (NZD);
(8) Australian Dollar (AUD);
(9) Swedish Kronor (SEK);
(10) Danish Kroner (DKK);
(11) Norwegian Krone (NOK); or
(12) Any other currency as determined by FHFA.

Margin means initial margin and variation margin.

Market intermediary means a securities holding company; a broker or dealer; a futures commission merchant as defined in 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28)); a swap dealer as defined in section 1a(49) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(49)); or a security-based swap dealer as defined in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(71)).

Material swaps exposure for an entity means that an entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. An entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time. For purposes of this calculation, an entity shall not count a swap or security-based swap that is exempt pursuant to §1221.1(d).

Multilateral development bank means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which FHFA determines poses comparable credit risk.

Non-cleared swap means a swap that is not cleared by a derivatives clearing organization registered with the Commodity Futures Trading Commission pursuant to section 5(b)(1) of the Commodity Exchange Act of 1936 (7 U.S.C. 7a–1(b)) or by a clearing organization that the Commodity Futures Trading Commission has exempted from registration by rule or order pursuant to section 5(b)(6) of the Commodity Exchange Act of 1936 (7 U.S.C. 7a–1(b)).

Non-cleared security-based swap means a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered with the U.S. Securities and Exchange Commission pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) or by a clearing agency that the U.S. Securities and Exchange Commission has exempted from registration by rule or order pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1).

Prudential regulator has the meaning specified in section 1a(39) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(39)).

Regulated entity means any regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4502(20)).

Savings and loan holding company has the meaning specified in section 10(n) of the Home Owners’ Loan Act (12 U.S.C. 1467a(n)).

Securities holding company has the meaning specified in section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1850a).


Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

State means any State, commonwealth, territory, or possession of a
United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

**Subsidiary.** A company is a subsidiary of another company if:

1. The company is consolidated by the other company on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards;

2. For a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) of this definition would have occurred if such principles or standards had applied; or

3. FHFA has determined that the company is a subsidiary of another company, based on FHFA’s conclusion that either company provides significant support to, or is materially subject to the risks of loss of, the other company.

**Swap** has the meaning specified in section 1a(47) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(47)).

**Swap entity** means a person that is registered with the Commodity Futures Trading Commission as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (7 U.S.C. 1 et seq.), or a person that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

**U.S. Government-sponsored enterprise** means an entity established or chartered by the U.S. government to serve public purposes specified by federal statute but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

**Variation margin** means collateral provided by one party to its counterparty to meet the performance of its obligations under one or more non-cleared swaps or non-cleared security-based swaps between the parties as a result of a change in value of such obligations since the last time such collateral was provided.

**Variation margin amount** means the cumulative mark-to-market change in value to a covered swap entity of a non-cleared swap or non-cleared security-based swap, as measured from the date it is entered into (or, in the case of a non-cleared swap or non-cleared security-based swap that has a positive or negative value to a covered swap entity on the date it is entered into, such positive or negative value plus any cumulative mark-to-market change in value to the covered swap entity of a non-cleared swap or non-cleared security-based swap after such date), less the value of all variation margin previously collected, plus the value of all variation margin previously posted with respect to such non-cleared swap or non-cleared security-based swap.

§ 1221.3 Initial margin.

(a) **Collection of margin.** A covered swap entity shall collect initial margin with respect to any non-cleared swap or non-cleared security-based swap from a counterparty that is a financial end user with material swaps exposure or that is a swap entity in an amount that is no less than the greater of:

1. Zero; or

2. The initial margin collection amount for such non-cleared swap or non-cleared security-based swap less the initial margin threshold amount (not including any portion of the initial margin threshold amount already applied by the covered swap entity or its affiliates to other non-cleared swaps or non-cleared security-based swaps with the counterparty or its affiliates), as applicable.

(b) **Posting of margin.** A covered swap entity shall post initial margin with respect to any non-cleared swap or non-cleared security-based swap to a counterparty that is a financial end user with material swaps exposure. Such initial margin shall be in an amount at least as large as the covered swap entity would be required to collect under paragraph (a) of this section if it were in the place of the counterparty.

(c) **Timing.** A covered swap entity shall comply with the initial margin
requirements described in paragraphs (a) and (b) of this section on each business day, for a period beginning on or before the business day following the day of execution and ending on the date the non-cleared swap or non-cleared security-based swap terminates or expires.

(d) Other counterparties. A covered swap entity is not required to collect or post initial margin with respect to any non-cleared swap or non-cleared security-based swap described in §1221.1(d). For any other non-cleared swap or non-cleared security-based swap between a covered swap entity and a counterparty that is neither a financial end user nor a swap entity, the covered swap entity shall collect variation margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately addresses the credit risk posed by the counterparty and the risks of such non-cleared swap or non-cleared security-based swap.

§ 1221.4 Variation margin.

(a) General. After the date on which a covered swap entity enters into a non-cleared swap or non-cleared security-based swap with a swap entity or financial end user, the covered swap entity shall collect variation margin equal to the variation margin amount from the counterparty to such non-cleared swap or non-cleared security-based swap when the amount is positive and post variation margin equal to the variation margin amount to the counterparty to such non-cleared swap or non-cleared security-based swap when the amount is negative.

(b) Timing. A covered swap entity shall comply with the variation margin requirements described in paragraph (a) of this section on each business day, for a period beginning on or before the business day following the day of execution and ending on the date the non-cleared swap or non-cleared security-based swap terminates or expires.

(c) Other counterparties. A covered swap entity is not required to collect or post variation margin with respect to any non-cleared swap or non-cleared security-based swap described in §1221.1(d). For any other non-cleared swap or non-cleared security-based swap between a covered swap entity and a counterparty that is neither a financial end user nor a swap entity, the covered swap entity shall collect variation margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately addresses the credit risk posed by the counterparty and the risks of such non-cleared swap or non-cleared security-based swap.

§ 1221.5 Netting arrangements, minimum transfer amount, and satisfaction of collecting and posting requirements.

(a) Netting arrangements. (1) For purposes of calculating and complying with the initial margin requirements of §.3 using an initial margin model as described in §1221.8, or with the variation margin requirements of §1221.4, a covered swap entity may net non-cleared swaps or non-cleared security-based swaps in accordance with this subsection.

(2) To the extent that one or more non-cleared swaps or non-cleared security-based swaps are executed pursuant to an eligible master netting agreement between a covered swap entity and its counterparty that is a swap entity or financial end user, a covered swap entity may calculate and comply with the applicable requirements of this part on an aggregate net basis with respect to all non-cleared swaps and non-cleared security-based swaps governed by such agreement, subject to paragraph (a)(3) of this section.

(3)(i) Except as permitted in paragraph (a)(3)(ii) of this section, if an eligible master netting agreement covers non-cleared swaps and non-cleared security-based swaps entered into on or after the applicable compliance date set forth in §1221.1(e) or (g), all the non-cleared swaps and non-cleared security-based swaps covered by that agreement are subject to the requirements of this part and included in the aggregate netting portfolio for the purposes of calculating and complying with the margin requirements of this part.
(ii) An eligible master netting agreement may identify one or more separate netting portfolios that independently meet the requirements in paragraph (1) of the definition of “Eligible master netting agreement” in §1221.2 and to which collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other non-cleared swaps or non-cleared security-based swaps covered by the eligible master netting agreement. Any such netting portfolio that contains any non-cleared swap or non-cleared security-based swap entered into on or after the applicable compliance date set forth in §1221.1(e) or (g) is subject to the requirements of this part. Any such netting portfolio that contains only non-cleared swaps or non-cleared security-based swaps entered into before the applicable compliance date is not subject to the requirements of this part.

(4) If a covered swap entity cannot conclude after sufficient legal review with a well-founded basis that the netting agreement described in this section meets the definition of eligible master netting agreement set forth in §1221.2, the covered swap entity must treat the non-cleared swaps and non-cleared security-based swaps covered by the agreement on a gross basis for the purposes of calculating and complying with the requirements of this part to post margin, but the covered swap entity may net those non-cleared swaps and non-cleared security-based swaps covered by the agreement in accordance with paragraphs (a)(1) through (3) of this section for the purposes of calculating and complying with the requirements of this part to collect margin.

(b) Minimum transfer amount. Notwithstanding §1221.3 or §1221.4, a covered swap entity is not required to collect or post margin pursuant to this part with respect to a particular counterparty unless and until the combined amount of initial margin and variation margin that is required pursuant to this part to be collected or posted and that has not yet been collected or posted with respect to the counterparty is greater than $500,000.

(c) Satisfaction of collecting and posting requirements. A covered swap entity shall not be deemed to have violated its obligation to collect or post margin from or to a counterparty under §1221.3, §1221.4, or §1221.6(e) if:

1. The counterparty has refused or otherwise failed to provide or accept the required margin to or from the covered swap entity; and

2. The covered swap entity has:
   (i) Made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of FHFA that it has made appropriate efforts to collect or post the required margin; or
   (ii) Commenced termination of the non-cleared swap or non-cleared security-based swap with the counterparty promptly following the applicable cure period and notification requirements.

§ 1221.6 Eligible collateral.

(a) Non-cleared swaps and non-cleared security-based swaps with a swap entity. For a non-cleared swap or non-cleared security-based swap with a swap entity, a covered swap entity shall collect initial margin and variation margin required pursuant to this part solely in the form of the following types of collateral:

1. Immediately available cash funds that are denominated in:
   (i) U.S. dollars or another major currency; or
   (ii) The currency of settlement for the non-cleared swap or non-cleared security-based swap;

2. With respect to initial margin only:
   (i) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;
   (ii) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the United States government;
   (iii) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity.
that is assigned no higher than a 20 percent risk weight under 12 CFR part 324;

(iv) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise’s eligible securities;

(v) A publicly traded debt security that meets the definition of “Investment quality” in §1267.1 of this chapter and is issued by a U.S. Government-sponsored enterprise not operating with capital support or another form of direct financial assistance from the U.S. government, and is not an asset-backed security;

(vi) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(vii) A security solely in the form of:

(A) Publicly traded debt not otherwise described in paragraph (a)(2) of this section that meets the definition of “Investment quality” in §1267.1 of this chapter and is not an asset-backed security;

(b) Non-cleared swaps and non-cleared security-based swaps with a financial end user. For a non-cleared swap or non-cleared security-based swap with a financial end user, a covered swap entity shall collect and post initial margin and variation margin required pursuant to this part solely in the form of the following types of collateral:

(1) Immediately available cash funds that are denominated in:

(i) U.S. dollars or another major currency; or

(ii) The currency of settlement for the non-cleared swap or non-cleared security-based swap;

(2) An index that a covered swap entity’s supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction;

(3) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully guaranteed by the full faith and credit of the United States government;
(4) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under 12 CFR part 324;

(5) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise’s eligible securities;

(6) A publicly traded debt security that meets the definition of “Investment quality” in §1267.1 of this chapter and is issued by a U.S. Government-sponsored enterprise not operating with capital support or another form of direct financial assistance from the U.S. government, and is not an asset-backed security;

(7) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(8) A security solely in the form of:

(i) Publicly traded debt not otherwise described in this paragraph (b) that meets the definition of “Investment quality” in §1267.1 of this chapter and is issued by a U.S. Government-sponsored enterprise not operating with capital support or another form of direct financial assistance from the U.S. government, and is not an asset-backed security;

(ii) Publicly traded common equity that is included in:

(A) The Standard & Poor’s Composite 1500 Index or any other similar index of liquid and readily marketable equity securities as determined by FHFA; or

(B) An index that a covered swap entity’s supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction;

(9) Securities in the form of redeemable securities in a pooled investment fund representing the security-holder’s proportional interest in the fund’s net assets and that are issued and redeemed only on the basis of the market value of the fund’s net assets prepared each business day after the security-holder makes its investment commitment or redemption request to the fund, if:

(i) The fund’s investments are limited to the following:

(A) Securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and immediately-available cash funds denominated in U.S. dollars; or

(B) Securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under 12 CFR part 324, and immediately-available cash funds denominated in the same currency; and

(ii) Assets of the fund may not be transferred through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or other means that involve the fund having rights to acquire the same or similar assets from the transferee;

(10) Gold.

(c)(1) The value of any eligible collateral collected or posted to satisfy margin requirements pursuant to this part is subject to the sum of the following discounts, as applicable:

(i) An 8 percent discount for variation margin collateral denominated in a currency that is not the currency of settlement for the non-cleared swap or non-cleared security-based swap, except for immediately available cash funds denominated in U.S. dollars or another major currency;

(ii) An 8 percent discount for initial margin collateral denominated in a currency that is not the currency of settlement for the non-cleared swap or non-cleared security-based swap, except for eligible types of collateral denominated in a single termination currency designated as payable to the non-posting counterparty as part of the eligible master netting agreement; and

(iii) For variation and initial margin non-cash collateral, the discounts described in appendix B of this part.

(2) The value of variation margin or initial margin collateral is computed
§ 1221.7 Segregation of collateral.

(a) A covered swap entity that posts any collateral other than for variation margin with respect to a non-cleared swap or a non-cleared security-based swap shall require that all funds or other property other than variation margin provided by the covered swap entity be held by one or more custodians that are not the covered swap entity or counterparty and not affiliates of the covered swap entity or the counterparty.

(b) A covered swap entity that collects initial margin required by § 1221.3(a) with respect to a non-cleared swap or a non-cleared security-based swap shall require that such initial margin be held by one or more custodians that are not the covered swap entity or counterparty and not affiliates of the covered swap entity or the counterparty.

(c) For purposes of paragraphs (a) and (b) of this section, the custodian must act pursuant to a custody agreement that:

(1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in § 1221.6(a)(2) or (b), such asset is held in compliance with this § 1221.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding.

(d) Notwithstanding paragraph (c)(1) of this section, a custody agreement may require that a custodian may not repledge, rehypothecate, or otherwise transfer collateral if it is required by this § 1221.7.

§ 1221.6(a)(2) or (b), such asset is held in compliance with this § 1221.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding.

(d) Notwithstanding paragraph (c)(1) of this section, a custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral collected by a covered swap entity pursuant to § 1221.3(a) or posted by a covered swap entity pursuant to

§ 1221.6(a)(2) or (b), such asset is held in compliance with this § 1221.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding.

(d) Notwithstanding paragraph (c)(1) of this section, a custody agreement may require that a custodian may not repledge, rehypothecate, or otherwise transfer collateral if it is required by this § 1221.7.

§ 1221.6(a)(2) or (b), such asset is held in compliance with this § 1221.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding.

(d) Notwithstanding paragraph (c)(1) of this section, a custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral collected by a covered swap entity pursuant to § 1221.3(a) or posted by a covered swap entity pursuant to
§ 1221.8 Initial margin models and standardized amounts.

(a) Standardized amounts. Unless a covered swap entity’s initial margin model conforms to the requirements of this section, the covered swap entity shall calculate the amount of initial margin required to be collected or posted for one or more non-cleared swaps or non-cleared security-based swaps with a given counterparty pursuant to §1221.3 on a daily basis pursuant to appendix A of this part.

(b) Use of initial margin models. A covered swap entity may calculate the amount of initial margin required to be collected or posted for one or more non-cleared swaps or non-cleared security-based swaps with a given counterparty pursuant to §1221.3 on a daily basis using an initial margin model only if the initial margin model meets the requirements of this section.

(c) Requirements for initial margin models. (1) A covered swap entity must obtain the prior written approval of FHFA before using any initial margin model to calculate the initial margin required in this section.

(2) A covered swap entity must demonstrate that the initial margin model satisfies all of the requirements of this section on an ongoing basis.

(3) A covered swap entity must notify FHFA in writing 60 days prior to:

(i) Extending the use of an initial margin model that FHFA has approved under this section to an additional product type;

(ii) Making any change to any initial margin model approved by FHFA under this section that would result in a material change in the covered swap entity’s assessment of initial margin requirements; or

(iii) Making any material change to modeling assumptions used by the initial margin model.

(4) FHFA may rescind its approval of the use of any initial margin model, in whole or in part, or may impose additional conditions or requirements if FHFA determines, in its sole discretion, that the initial margin model no longer complies with this section.

(d) Quantitative requirements. (1) The covered swap entity’s initial margin model must calculate an amount of initial margin that is equal to the potential future exposure of the non-cleared swap, non-cleared security-based swap or netting portfolio of non-cleared swaps or non-cleared security-based swaps covered by an eligible master netting agreement. Potential future exposure is an estimate of the one-tailed 99 percent confidence interval for an increase in the value of the non-cleared swap, non-cleared security-based swap or netting portfolio of non-cleared swaps or non-cleared security-based swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of ten business days or the maturity of the non-cleared swap, non-cleared security-based swap or netting portfolio.

(2) All data used to calibrate the initial margin model must be based on an equally weighted historical observation period of at least one year and not more than five years and must incorporate a period of significant financial stress for each broad asset class that is appropriate to the non-cleared swaps and non-cleared security-based swaps to which the initial margin model is applied.

(3) The covered swap entity’s initial margin model must use risk factors sufficient to measure all material price risks inherent in the transactions for which initial margin is being calculated. The risk categories must include, but should not be limited to, foreign exchange or interest rate risk, credit risk, equity risk, and commodity...
risk, as appropriate. For material exposures in significant currencies and markets, modeling techniques must capture spread and basis risk and must incorporate a sufficient number of segments of the yield curve to capture differences in volatility and imperfect correlation of rates along the yield curve.

(4) In the case of a non-cleared cross-currency swap, the covered swap entity’s initial margin model need not recognize any risks or risk factors associated with the fixed, physically-settled foreign exchange transaction associated with the exchange of principal embedded in the non-cleared cross-currency swap. The initial margin model must recognize all material risks and risk factors associated with all other payments and cash flows that occur during the life of the non-cleared cross-currency swap.

(5) The initial margin model may calculate initial margin for a non-cleared swap or non-cleared security-based swap or a netting portfolio of non-cleared swaps or non-cleared security-based swaps covered by an eligible master netting agreement. It may reflect offsetting exposures, diversification, and other hedging benefits for non-cleared swaps and non-cleared security-based swaps that are governed by the same eligible master netting agreement by incorporating empirical correlations within the following broad risk categories, provided the covered swap entity validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits: Commodity, credit, equity, and foreign exchange or interest rate. Empirical correlations under an eligible master netting agreement may be recognized by the initial margin model within each broad risk category, but not across broad risk categories.

(6) If the initial margin model does not explicitly reflect offsetting exposures, diversification, and hedging benefits between subsets of non-cleared swaps or non-cleared security-based swaps within a broad risk category, the covered swap entity must calculate an amount of initial margin separately for each subset within which such relationships are explicitly recognized by the initial margin model. The sum of the initial margin amounts calculated for each subset of non-cleared swaps and non-cleared security-based swaps within a broad risk category will be used to determine the aggregate initial margin due from the counterparty for the portfolio of non-cleared swaps and non-cleared security-based swaps within the broad risk category.

(7) The sum of the initial margin amounts calculated for each broad risk category will be used to determine the aggregate initial margin due from the counterparty.

(8) The initial margin model may not permit the calculation of any initial margin collection amount to be offset by, or otherwise take into account, any initial margin that may be owed or otherwise payable by the covered swap entity to the counterparty.

(9) The initial margin model must include all material risks arising from the nonlinear price characteristics of option positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors.

(10) The covered swap entity may not omit any risk factor from the calculation of its initial margin that the covered swap entity uses in its initial margin model unless it has first demonstrated to the satisfaction of FHFA that such omission is appropriate.

(11) The covered swap entity may not incorporate any proxy or approximation used to capture the risks of the covered swap entity’s non-cleared swaps or non-cleared security-based swaps unless it has first demonstrated to the satisfaction of FHFA that such proxy or approximation is appropriate.

(12) The covered swap entity must have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal margin model to ensure continued applicability and relevance.

(13) The covered swap entity must review and, as necessary, revise the data used to calibrate the initial margin model at least annually, and more frequently as market conditions warrant, to ensure that the data incorporate a period of significant financial stress.
appropriate to the non-cleared swaps and non-cleared security-based swaps to which the initial margin model is applied.

(14) The level of sophistication of the initial margin model must be commensurate with the complexity of the non-cleared swaps and non-cleared security-based swaps to which it is applied. In calculating an initial margin collection amount, the initial margin model may make use of any of the generally accepted approaches for modeling the risk of a single instrument or portfolio of instruments.

(15) FHFA may in its sole discretion require a covered swap entity using an initial margin model to collect a greater amount of initial margin than that determined by the covered swap entity’s initial margin model if FHFA determines that the additional collateral is appropriate due to the nature, structure, or characteristics of the covered swap entity’s transaction(s), or is commensurate with the risks associated with the transaction(s).

(e) Periodic review. A covered swap entity must periodically, but no less frequently than annually, review its initial margin model in light of developments in financial markets and modeling technologies, and enhance the initial margin model as appropriate to ensure that the initial margin model continues to meet the requirements for approval in this section.

(1) Control, oversight, and validation mechanisms. (1) The covered swap entity must maintain a risk control unit that reports directly to senior management and is independent from the business trading units.

(2) The covered swap entity’s risk control unit must validate its initial margin model prior to implementation and on an ongoing basis. The covered swap entity’s validation process must be subject to an independent review of its adequacy and effectiveness. The validation process must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the initial margin model;

(ii) An ongoing monitoring process that includes verification of processes and benchmarking by comparing the covered swap entity’s initial margin model outputs (estimation of initial margin) with relevant alternative internal and external data sources or estimation techniques. The benchmark(s) must address the chosen model’s limitations. When applicable, the covered swap entity should consider benchmarks that allow for non-normal distributions such as historical and Monte Carlo simulations. When applicable, validation shall include benchmarking against observable margin standards to ensure that the initial margin required is not less than what a derivatives clearing organization or a clearing agency would require for similar cleared transactions; and

(iii) An outcomes analysis process that includes backtesting the initial margin model. This analysis must recognize and compensate for the challenges inherent in back-testing over periods that do not contain significant financial stress.

(3) If the validation process reveals any material problems with the initial margin model, the covered swap entity must promptly notify FHFA of the problems, describe to FHFA any remedial actions being taken, and adjust the initial margin model to ensure an appropriately conservative amount of required initial margin is being calculated.

(4) The covered swap entity must have an internal audit function independent of business-line management and the risk control unit that at least annually assesses the effectiveness of the controls supporting the covered swap entity’s initial margin model measurement systems, including the activities of the business trading units and risk control unit, compliance with policies and procedures, and calculation of the covered swap entity’s initial margin requirements under this part. At least annually, the internal audit function must report its findings to the covered swap entity’s board of directors or a committee thereof.

(g) Documentation. The covered swap entity must adequately document all material aspects of its initial margin model, including the management and

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valuation of the non-cleared swaps and non-cleared security-based swaps to which it applies, the control, oversight, and validation of the initial margin model, any review processes and the results of such processes.

(h) Escalation procedures. The covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval.

§ 1221.9 Cross-border application of margin requirements.

(a) Transactions to which this rule does not apply. The requirements of §§1221.3 through 1221.8 and §§1221.10 through 1221.12 shall not apply to any foreign non-cleared swap or foreign non-cleared security-based swap of a foreign covered swap entity.

(b) For purposes of this section, a foreign non-cleared swap or foreign non-cleared security-based swap is any non-cleared swap or non-cleared security-based swap with respect to which neither the counterparty to the foreign covered swap entity nor any party that provides a guarantee of either party’s obligations under the non-cleared swap or non-cleared security-based swap is:

(1) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States;

(2) A branch or office of an entity organized under the laws of the United States or any State; or

(3) An entity that is a subsidiary of an entity that is organized under the laws of the United States or any State.

(d) Transactions for which substituted compliance determination may apply—(1) Determinations and reliance. For non-cleared swaps and non-cleared security-based swaps entered into by covered swap entities described in paragraph (d)(3) of this section, a covered swap entity may satisfy the provisions of this part by complying with the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps that the prudential regulators jointly, conditionally or unconditionally, determine by public order satisfy the corresponding requirements of §§1221.3 through 1221.8 and §§1221.10 through 1221.12.

(2) Standard. In determining whether to make a determination under paragraph (d)(1) of this section, the prudential regulators will consider whether the requirements of such foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps applicable to such covered swap entities are comparable to the otherwise applicable requirements of this part and appropriate for the safe and sound operation of the covered swap entity, taking into account the risks associated with non-cleared swaps and non-cleared security-based swaps.

(3) Covered swap entities eligible for substituted compliance. A covered swap entity may rely on a determination under paragraph (d)(1) of this section only if:

(i) The covered swap entity’s obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(A) An entity organized under the laws of the United States or any State (other than a U.S. branch or agency of a foreign bank) or a natural person who is a resident of the United States; or

(B) A branch or office of an entity organized under the laws of the United States or any State; and

(ii) The covered swap entity is:

(A) A foreign covered swap entity;

(B) A U.S. branch or agency of a foreign bank; or
(C) An entity that is not organized under the laws of the United States or any State and is a subsidiary of a depository institution, Edge corporation, or agreement corporation.

(4) Compliance with foreign margin collection requirement. A covered swap entity satisfies its requirement to post initial margin under §1221.3(b) by posting to its counterparty initial margin in the form and amount, and at such times, that its counterparty is required to collect pursuant to a foreign regulatory framework, provided that the counterparty is subject to the foreign regulatory framework and the prudential regulators have made a determination under paragraph (d)(1) of this section, unless otherwise stated in that determination, and the counterparty’s obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(i) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States; or

(ii) A branch or office of an entity organized under the laws of the United States or any State.

(e) Requests for determinations. (1) A covered swap entity described in paragraph (d)(3) of this section may request that the prudential regulators make a determination pursuant to this section. A request for a determination must include a description of:

(i) The scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps;

(ii) The specific provisions of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps that govern:

(A) The scope of transactions covered;

(B) The determination of the amount of initial margin and variation margin required and how that amount is calculated;

(C) The timing of margin requirements;

(D) Any documentation requirements;

(E) The forms of eligible collateral;

(F) Any segregation and rehypothecation requirements; and

(G) The approval process and standards for models used in calculating initial margin and variation margin;

(iii) The supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap or non-cleared security-based swap regulatory framework and how that framework applies to the non-cleared swaps or non-cleared security-based swaps of the covered swap entity; and

(iv) Any other descriptions and documentation that the prudential regulators determine are appropriate.

(2) A covered swap entity described in paragraph (d)(3) of this section may make a request under this section only if the non-cleared swap or non-cleared security-based swap activities of the covered swap entity are directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

(f) Segregation unavailable. Sections 1221.3(b) and 1221.7 do not apply to a non-cleared swap or non-cleared security-based swap entered into by:

(1) A foreign branch of a covered swap entity that is a depository institution; or

(2) A covered swap entity that is not organized under the laws of the United States or any State and is a subsidiary of a depository institution, Edge corporation, or agreement corporation, if:

(i) Inherent limitations in the legal or operational infrastructure in the foreign jurisdiction make it impracticable for the covered swap entity and the counterparty to post any form of eligible initial margin collateral recognized pursuant to §1221.6(b) in compliance with the segregation requirements of §1221.7;

(ii) The covered swap entity is subject to foreign regulatory restrictions that require the covered swap entity to transact in the non-cleared swap or non-cleared security-based swap with the counterparty through an establishment within the foreign jurisdiction and do not accommodate the posting of collateral for the non-cleared swap or
non-cleared security-based swap outside the jurisdiction;

(iii) The counterparty to the non-cleared swap or non-cleared security-based swap is not, and the counterparty’s obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(A) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States; or

(B) A branch or office of an entity organized under the laws of the United States or any State;

(iv) The covered swap entity collects initial margin for the non-cleared swap or non-cleared security-based swap in accordance with §1221.3(a) in the form of cash pursuant to §1221.6(b)(1), and posts and collects variation margin in accordance with §1221.4(a) in the form of cash pursuant to §1221.6(b)(1); and

(v) FHFA provides the covered swap entity with prior written approval for the covered swap entity’s reliance on this paragraph (f) for the foreign jurisdiction.

(g) Guarantee means an arrangement pursuant to which one party to a non-cleared swap or non-cleared security-based swap has rights of recourse against a third-party guarantor, with respect to its counterparty’s obligations under the non-cleared swap or non-cleared security-based swap. For these purposes, a party to a non-cleared swap or non-cleared security-based swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty’s obligations under the non-cleared swap or non-cleared security-based swap. In addition, any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other third party guarantor with respect to the counterparty’s obligations under the non-cleared swap or non-cleared security-based swap, such arrangement will be deemed a guarantee of the counterparty’s obligations under the non-cleared swap or non-cleared security-based swap by the other guarantor.

§ 1221.10 Documentation of margin matters.

A covered swap entity shall execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that:

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this part; and

(b) Specifies:

(1) The methods, procedures, rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements; and

(2) The procedures by which any disputes concerning the valuation of non-cleared swaps or non-cleared security-based swaps, or the valuation of assets collected or posted as initial margin or variation margin, may be resolved; and

(c) Describes the methods, procedures, rules, and inputs used to calculate initial margin for non-cleared swaps and non-cleared security based swaps entered into between the covered swap entity and the counterparty.

§ 1221.11 Special rules for affiliates.

(a) Affiliates. This part applies to a non-cleared swap or non-cleared security-based swap of a covered swap entity with its affiliate, unless the swap or security-based swap is excluded from coverage under §1221.1(d) or as otherwise provided in this section. To the extent of any inconsistency between this section and any other provision of this part, this section will apply.

(b) Initial margin—(1) Posting of initial margin. The requirement for a covered swap entity to post initial margin under §1221.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate. A covered swap entity shall calculate the amount of initial margin that would be
required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to §1221.3(b) and provide documentation of such amount to each affiliate on a daily basis.

(2) Initial margin threshold amount. For purposes of calculating the amount of initial margin to be collected from an affiliate counterparty in accordance with §1221.3(a) or calculating the amount of initial margin that would have been posted to an affiliate counterparty in accordance with paragraph (b)(1) of this section, the initial margin threshold amount is an aggregate credit exposure of $20 million resulting from all non-cleared swaps and non-cleared security-based swaps between the covered swap entity and that affiliate. For purposes of this calculation, an entity shall not count a non-cleared swap or non-cleared security-based swap that is exempt pursuant to §1221.1(d).

(c) Variation margin. A covered swap entity shall collect and post variation margin with respect to a non-cleared swap or non-cleared security-based swap with any counterparty that is an affiliate as provided in §1221.4.

(d) Custodian for non-cash collateral. To the extent that a covered swap entity collects initial margin required by §1221.3(a) from an affiliate with respect to any non-cleared swap or non-cleared security-based swap in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity.

(e) Model holding period and netting—(1) Model holding period. For any non-cleared swap or non-cleared security-based swap (or netting portfolio) between a covered swap entity and an affiliate that would be subject to the clearing requirements of section 2(h)(1)(A) of the Commodity Exchange Act of 1936 or section 3C(a)(1) of the Securities Exchange Act of 1934 but for an exemption under section 2(h)(7)(C)(iii) or (D) or section 4(c)(1) of the Commodity Exchange Act of 1936 or regulations of the Commodity Futures Trading Commission or section 3C(g)(4) of the Securities Exchange Act of 1934 or regulations of the U.S. Securities and Exchange Commission, the covered swap entity’s initial margin model calculation as described in §1221.8(d)(1) may use a holding period equal to the shorter of five business days or the maturity of the non-cleared swap or non-cleared security-based swap (or netting portfolio).

(2) Netting arrangements. Any netting portfolio that contains any non-cleared swap or non-cleared security-based swap with a model holding period equal to the shorter of five business days or the maturity of the non-cleared swap or non-cleared security-based swap pursuant to paragraph (e)(1) of this section must be identified and separate from any other netting portfolio for purposes of calculating and complying with the initial margin requirements of this part.

(f) Standardized amounts. If a covered swap entity’s initial margin model does not conform to the requirements of §1221.8, the covered swap entity shall calculate the amount of initial margin required to be collected for one or more non-cleared swaps or non-cleared security-based swaps with a given affiliate counterparty pursuant to section §1221.3 on a daily basis pursuant to Appendix A with the gross initial margin multiplied by 0.7.

§1221.12 Capital.

A covered swap entity shall comply with the capital levels or such other amounts applicable to it as required by the Director of FHFA pursuant to 12 U.S.C. 4611.

[80 FR 74914, Nov. 30, 2015]

APPENDIX A TO PART 1221—STANDARDIZED MINIMUM INITIAL MARGIN REQUIREMENTS FOR NON-CLEARED SWAPS AND NON-CLEARED SECURITY-BASED SWAPS
TABLE A—STANDARDIZED MINIMUM GROSS INITIAL MARGIN REQUIREMENTS FOR NON-CLEARED SWAPS AND NON-CLEARED SECURITY-BASED SWAPS

<table>
<thead>
<tr>
<th>Asset Class</th>
<th>Gross initial margin (% of notional exposure)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit: 0–2 year duration</td>
<td>2</td>
</tr>
<tr>
<td>Credit: 2–5 year duration</td>
<td>5</td>
</tr>
<tr>
<td>Credit: 5+ year duration</td>
<td>10</td>
</tr>
<tr>
<td>Commodity</td>
<td>15</td>
</tr>
<tr>
<td>Equity</td>
<td>15</td>
</tr>
<tr>
<td>Foreign Exchange/Currency</td>
<td>6</td>
</tr>
<tr>
<td>Cross-Currency Swaps: 0–2 year duration</td>
<td>1</td>
</tr>
<tr>
<td>Cross-Currency Swaps: 2–5 year duration</td>
<td>2</td>
</tr>
<tr>
<td>Cross-Currency Swaps: 5+ year duration</td>
<td>4</td>
</tr>
<tr>
<td>Interest Rate: 0–2 year duration</td>
<td>1</td>
</tr>
<tr>
<td>Interest Rate: 2–5 year duration</td>
<td>2</td>
</tr>
<tr>
<td>Interest Rate: 5+ year duration</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>15</td>
</tr>
</tbody>
</table>

\* The initial margin amount applicable to multiple non-cleared swaps or non-cleared security-based swaps subject to an eligible master netting agreement that is calculated according to Appendix A will be computed as follows:

\[ \text{Initial Margin} = 0.4 \times \text{Gross Initial Margin} + 0.6 \times \text{NGR} \times \text{Gross Initial Margin} \]

where:

- Gross Initial Margin = the sum of the product of each non-cleared swap’s or non-cleared security-based swap’s effective notional amount and the gross initial margin requirement for all non-cleared swaps and non-cleared security-based swaps subject to the eligible master netting agreement;
- NGR = the net-to-gross ratio (that is, the ratio of the net current replacement cost to the gross current replacement cost). In calculating NGR, the gross current replacement cost equals the sum of the replacement cost for each non-cleared swap and non-cleared security-based swap subject to the eligible master netting agreement for which the cost is positive. The net current replacement cost equals the total replacement cost for all non-cleared swaps and non-cleared security-based swaps subject to the eligible master netting agreement. In cases where the gross replacement cost is zero, the NGR should be set to 1.0.

APPENDIX B TO 1221—MARGIN VALUES FOR ELIGIBLE NONCASH MARGIN COLLATERAL

TABLE B—MARGIN VALUES FOR ELIGIBLE NONCASH MARGIN COLLATERAL

<table>
<thead>
<tr>
<th>Asset class</th>
<th>Discount (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible government and related (e.g., central bank, multilateral development bank, GSE securities identified in §1221.6(a)(2)(iv) or (b)(5) debt: residual maturity less than one-year</td>
<td>0.5</td>
</tr>
<tr>
<td>Eligible government and related (e.g., central bank, multilateral development bank, GSE securities identified in §1221.6(a)(2)(iv) or (b)(5) debt: residual maturity between one and five years</td>
<td>2.0</td>
</tr>
<tr>
<td>Eligible GSE debt securities not identified in §1221.6(a)(2)(iv) or (b)(5): residual maturity less than one-year</td>
<td>4.0</td>
</tr>
<tr>
<td>Eligible GSE debt securities not identified in §1221.6(a)(2)(iv) or (b)(5): residual maturity between one and five years</td>
<td>1.0</td>
</tr>
<tr>
<td>Eligible GSE debt securities not identified in §1221.6(a)(2)(iv) or (b)(5): residual maturity greater than five years</td>
<td>4.0</td>
</tr>
<tr>
<td>Other eligible publicly traded debt: residual maturity less than one-year</td>
<td>8.0</td>
</tr>
<tr>
<td>Other eligible publicly traded debt: residual maturity between one and five years</td>
<td>4.0</td>
</tr>
<tr>
<td>Other eligible publicly traded debt: residual maturity greater than five years</td>
<td>8.0</td>
</tr>
<tr>
<td>Equities included in S&amp;P 500 or related index</td>
<td>15.0</td>
</tr>
<tr>
<td>Equities included in S&amp;P 1500 Composite or related index but not S&amp;P 500 or related index</td>
<td>25.0</td>
</tr>
<tr>
<td>Gold</td>
<td>15.0</td>
</tr>
</tbody>
</table>

\* The discount to be applied to an eligible investment fund is the weighted average discount on all assets within the eligible investment fund at the end of the prior month. The weights to be applied in the weighted average should be calculated as a fraction of the fund’s total market value that is invested in each asset with a given discount amount. As an example, an eligible investment fund that is comprised solely of $100 of 91 day Treasury bills and $100 of 3 year US Treasury bonds would receive a discount of \(100/(100/200) \times 0.5 + (100/200) \times 2.0\) = (0.5)\(0.5\) + (0.5)\(2.0\) = 1.25 percent.
Federal Housing Finance Agency

PART 1222—APPRAISALS

Subpart A—Requirements for Higher-Priced Mortgage Loans

Sec. 1222.1 Purpose and scope.
1222.2 Reservation of authority.

Subpart B—Appraisal Management Company Minimum Requirements

1222.20 Authority, purpose, and scope.
1222.21 Definitions.
1222.22 Appraiser panel—annual size calculation.
1222.23 Appraisal management company registration.
1222.24 Ownership limitations for State-registered appraisal management companies.
1222.25 Requirements for Federally regulated appraisal management companies.
1222.26 Information to be presented to the Appraisal Subcommittee by participating States.

Subparts C to Z [Reserved]


SOURCE: 78 FR 10446, Feb. 13, 2013, unless otherwise noted.

Subpart B—Appraisal Management Company Minimum Requirements

1222.20 Authority, purpose, and scope.


(b) Purpose. The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) Scope. This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer’s principal dwelling or securitizations of those transactions.

(d) Rule of construction. Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation
 Guidelines or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings associations, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third-party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 1222.21 Definitions.

For purposes of this subpart:

(a) Affiliate has the meaning provided in 12 U.S.C. 1841.

(b) AMC National Registry means the registry of State-registered AMCs and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) Appraisal management company (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;
(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and
(iii) Within a given 12-month period, as defined in §1222.22(d), oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in §1222.22;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) Appraisal management services means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;
(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;
(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and
(4) Reviewing and verifying the work of appraisers.

(e) Appraiser panel means a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC’s “appraiser panel” under this part include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this subpart if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

(f) Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(h) Covered transaction means any consumer credit transaction secured by the consumer’s principal dwelling.

(i) Creditor means:

(1) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(2) A person regularly extends consumer credit if the person extended credit (other than credit subject to the requirements of 12 CFR 1026.32) more than 5 times for transactions secured by a dwelling in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards

175 FR 77450 (December 10, 2010).
Federal Housing Finance Agency

§ 1222.22 Appraiser panel—annual size calculation.

For purposes of determining whether, within a 12-month period, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States pursuant to §1222.21(c)(1)(ii)—

(a) An appraiser is deemed part of the AMC’s appraiser panel as of the earliest date on which the AMC:

(1) Accepts the appraiser for the AMC’s consideration for future assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions;

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with covered transactions.

(b) An appraiser who is deemed part of the AMC’s appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC’s appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the AMC’s removal, the removal...
§ 1222.23 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in §1222.24 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC’s application for initial registration;

(2) Review and renew or review and deny an AMC’s registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC’s panel hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC’s violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC’s operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Engage only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

§ 1222.24 Ownership limitations for State-registered appraisal management companies.

(a) Appraiser certification or licensing of owners. (1) An AMC subject to State registration pursuant to §1222.23 shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.

(2) An AMC subject to State registration pursuant to §1222.23 is not barred by paragraph (a)(1) of this section from being registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.

(b) Good moral character of owners. An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—
Federal Housing Finance Agency

§ 1225.3

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or
(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 1225.3 Requirements for Federally regulated appraisal companies.

(a) Requirements in providing services.
To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in § 1222.23(b)(2) through (5).

(b) Ownership limitations.
(1) A Federally regulated AMC shall not be included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the ASC.

(2) A Federally regulated AMC is not barred pursuant to paragraph (b)(1) of this section from being included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(c) Reporting information for the AMC National Registry.
A Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State to the Appraisal Subcommittee pursuant to the Appraisal Subcommittee's policies regarding the determination of the AMC National Registry fee, including but not necessarily limited to the collection of information related to the limitations set forth in this section, as applicable.

§ 1225.3 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Subparts C–Z [Reserved]

PART 1225—MINIMUM CAPITAL—TEMPORARY INCREASE

Sec.
1225.1 Purpose.
1225.2 Definitions.
1225.3 Procedures.
1225.4 Standards and factors.
1225.5 Guidances.

SOURCE: 76 FR 11674, Mar. 3, 2011, unless otherwise noted.

§ 1225.1 Purpose.
FHFA is responsible for ensuring the safe and sound operation of regulated entities. In furtherance of that responsibility, this part sets forth standards and procedures FHFA will employ to determine whether to require or rescind a temporary increase in the minimum capital levels for a regulated entity or entities pursuant to 12 U.S.C. 4612(d).

§ 1225.2 Definitions.
For purposes of this part, the term:
Minimum capital level means the lowest amount of capital meeting any regulation or orders issued pursuant to 12 U.S.C. 1426(a)(2) and 12 U.S.C. 4612, or any similar requirement established for a Federal Home Loan Bank by regulation, order or other action.

Rescission means a removal in whole or in part of an increase in the temporary minimum capital level.


§ 1225.3 Procedures.
(a) Information—(1) Information to the regulated entity or entities. If the Director determines, based on standards enunciated in this part, that a temporary increase in the minimum capital level is necessary, the Director will provide notice to the affected regulated entity or entities 30 days in advance of the date that the temporary
§ 1225.4 Standards and factors.

(a) Standard for imposing a temporary increase. In making a determination to increase temporarily a minimum capital requirement for a regulated entity or entities, the Director will consider the necessity and consistency of such an increase with the prudential regulation and the safe and sound operations of a regulated entity. The Director may impose a temporary minimum capital increase if consideration of one or more of the following factors leads the Director to the judgment that the current minimum capital requirement for a regulated entity is insufficient to address the entity’s risks:

(1) Current or anticipated declines in the value of assets held by a regulated entity; the amounts of mortgage-backed securities issued or guaranteed by the regulated entity; and, its ability to access liquidity and funding;

(2) Credit (including counterparty), market, operational and other risks facing a regulated entity, especially where an increase in risks is foreseeable and consequential;

(3) Current or projected declines in the capital held by a regulated entity;

(4) A regulated entity’s material non-compliance with regulations, written orders, or agreements;

(5) Housing finance market conditions;

(6) Level of reserves or retained earnings;

(7) Initiatives, operations, products, or practices that entail heightened risk;

(8) With respect to a Bank, the ratio of the market value of its equity to par value of its capital stock where the market value of equity is the value calculated and reported by the Bank as “market value of total capital” under 12 CFR 932.5(a)(1)(ii)(A); or

(9) Other conditions as detailed by the Director in the notice provided under §1225.3.

(b) Standard for rescission of a temporary increase. In making a determination to rescind a temporary increase in

monthly capital requirement becomes effective, unless the Director determines that an exigency exists that does not permit such notice or the Director determines a longer time period would be appropriate.

(2) Information to the Government. The Director shall inform the Secretary of the Treasury, the Secretary of Housing and Urban Development, and the Chairman of the Securities and Exchange Commission of a temporary increase in the minimum capital level contemporaneously with informing the affected regulated entity or entities.

(b) Comments. The affected regulated entity or entities may provide comments regarding or objections to the temporary increase to FHFA within 15 days or such other period as the Director determines appropriate under the circumstances. The Director may determine to modify, delay, or rescind the announced temporary increase in response to such comments or objection, but no further notice is required for the temporary increase to become effective upon the date originally determined by the Director.

(c) Communication. The Director shall transmit notice of a temporary increase or rescission of a temporary increase in the minimum capital level in writing, using electronic or such other means as appropriate. Such communication shall set forth, at a minimum, the bases for the Director’s determination, the amount of increase or decrease in the minimum capital level, the anticipated duration of such increase, and a description of the procedures for requesting a rescission of the temporary increase in the minimum capital level.

(d) Written plan. In making a finding under this part, the Director may require a written plan to augment capital to be submitted on a timely basis to address the methods by which such temporary increase may be attained and the time period for reaching the new temporary minimum capital level.

(e) Time frame for review of temporary increase for purpose of rescission. (1) Absent an earlier determination to rescind in whole or in part a temporary increase in the minimum capital level for a regulated entity or entities, the Director shall no less than every 12 months, consider the need to maintain, modify, or rescind such increase.

(2) A regulated entity or regulated entities may at any time request in writing such review by the Director.
the minimum capital level for a regulated entity or entities, whether in full or in part, the Director will consider the consistency of such a rescission with the prudential regulation and safe and sound operations of a regulated entity. The Director will rescind, in full or in part, a temporary minimum capital increase if consideration of one or more of the following factors leads the Director to the judgment that rescission of a temporary minimum-capital increase for a regulated entity is appropriate considering the entity’s risks:

1. Changes to the circumstances or facts that led to the imposition of a temporary increase in the minimum capital levels;
2. The meeting of targets set for a regulated entity in advance of any capital or capital-related plan agreed to by the Director;
3. Changed circumstances or facts based on new developments occurring since the imposition of the temporary increase in the minimum capital level, particularly where the original problems or concerns have been successfully addressed or alleviated in whole or in part; or
4. Such other standard as the Director may consider as detailed by the Director in the notice provided under §1225.3.

§ 1227.5 Guidelines.

The Director may determine, from time to time, issue guidance to elaborate, to refine or to provide new information regarding standards or procedures contained herein.

PART 1227—SUSPENDED COUNTERPARTY PROGRAM

Subpart A—General

§ 1227.1 Purpose.

This part sets forth the procedures FHFA follows under its Suspended Counterparty Program, the purpose of which is to protect the safety and soundness of the regulated entities. The procedures require the regulated entities to submit reports when they become aware that a person with whom they have engaged or are engaging in a covered transaction within the past three (3) years has engaged in covered misconduct. The procedures set forth a process for FHFA to issue suspension orders directing the regulated entities to cease or refrain from engaging in covered transactions with such persons and any affiliates thereof for a specified period of time or permanently. A suspension order is not intended to be, and may not be issued as, a form of punishment for the suspended person. The procedures include options for:

(a) Appeal of a final suspension order to the Director;
(b) Request for reconsideration of a final suspension order after twelve (12) months have elapsed; and
(c) Request for an exception to a final suspension order in effect in order to engage in a particular covered transaction with the suspended person.

§ 1227.2 Definitions.

For purposes of this part: Administrative sanction means debarment or suspension imposed by any Federal agency, or any similar administrative action that has the effect of limiting the ability of a person to do business with a Federal agency, including Limited Denials of Participation, Temporary Denials of Participation, or settlements of proposed administrative sanctions if the terms of the settlement restrict the person’s ability to do business with the Federal agency in question.

Affiliate means a party that either controls or is controlled by another person, whether directly or indirectly,
including one or more persons that are controlled by the same third person.

Conviction means:
(1) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea; or
(2) Any other resolution that is the functional equivalent of a judgment of guilt of a criminal offense, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

Covered misconduct means:
(1) Any conviction or administrative sanction within the past three (3) years if the basis of such action involved fraud, embezzlement, theft, conversion, forgery, bribery, perjury, making false statements or claims, tax evasion, obstruction of justice, or any similar offense, in each case in connection with a mortgage, mortgage business, mortgage securities or other lending product.
(2) FHFA may impute covered misconduct among affiliates as follows:
   (i) Conduct imputed from an individual to an organization. FHFA may impute the covered misconduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the conduct occurred in connection with the individual’s performance of duties for or on behalf of that organization, or with the organization’s knowledge, approval, or acquiescence. The organization’s acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.
   (ii) Conduct imputed from an organization to an individual, or between individuals. FHFA may impute the covered misconduct of any organization to an individual, or from one individual to another individual, if the individual to whom the conduct is imputed either participated in, had knowledge of, or had reason to know of the conduct.
   (iii) Conduct imputed from one organization to another organization. FHFA may impute the covered misconduct of one organization to another organization when the conduct occurred in connection with a partnership, joint venture, joint application, association, or similar arrangement, or when the organization to whom the conduct is imputed has the power to direct, manage, control, or influence the activities of the organization responsible for the conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence and hence is a basis for imputation of conduct.

Covered transaction means a contract, agreement, or financial or business relationship between a regulated entity and a person and any affiliates thereof.

Person means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, organization, or other entity.

Respondent means a person and any affiliate thereof that is the subject of a proposed or final suspension order.

Suspending official means the Director, or any other FHFA official with delegated authority to sign proposed and final suspension orders and their accompanying notices.

Suspension means an action taken by a suspending official pursuant to a final suspension order that requires a regulated entity to cease or refrain from engaging in any covered transactions with a person and any affiliates thereof for a specified period of time or permanently.

§ 1227.3 Scope of suspension orders.
(a) General. A suspending official may issue a final suspension order to the regulated entities directing them to cease or refrain from engaging in any covered transactions with a particular person and any affiliates thereof for a specified period of time or permanently, pursuant to the requirements of this part.
(b) No effect on other actions by FHFA. Nothing in this part shall limit the authority of FHFA to pursue any other regulatory or supervisory action with respect to any regulated entity or any other person and any affiliates thereof, whether instead of or in addition to any action taken under this part.
(c) No effect on other actions by a regulated entity. Nothing in this part shall limit the authority of any regulated entity, including any regulated entity, to pursue any other regulatory or supervisory action with respect to any regulated entity or any other person and any affiliates thereof.
§ 1227.5 Proposed suspension order.

(a) A suspending official may base a proposed suspension order upon evidence of covered misconduct from any of the following sources:

(1) A required report submitted by a regulated entity;

(2) A referral submitted by FHFA’s Office of Inspector General; or

(3) Any other source of information.

(b) Grounds for issuance. A suspending official may issue a proposed suspension order with respect to a particular person and any affiliates thereof if the suspending official determines that there is evidence that:

(1) The person or any affiliates thereof has engaged in covered misconduct, which evidence may include copies of any order or other documents documenting a conviction or administrative sanction for such conduct; and

(2) The covered misconduct is of a type that would be likely to cause significant financial or reputational harm to a regulated entity or otherwise threaten the safe and sound operation of a regulated entity.

(c) Notice required. If a suspending official determines that grounds exist under paragraph (b) of this section for issuance of a proposed suspension order with respect to a particular person and any affiliates thereof, the suspending official may issue a written notice of proposed suspension to the person and any affiliates thereof, and shall provide a copy of such notice to the regulated entity and to all of the other regulated entities.

(d) Content of notice. The notice of proposed suspension shall include:

(1) The time period during which the suspension will apply;

(2) A statement of the suspending official’s proposed suspension determination and supporting grounds;

(3) The proposed suspension order;
(4) Instructions on how to respond; and
(5) The date by which any response must be received, which must be at least thirty (30) calendar days after the date on which the notice is sent.

(e) Method of sending notice. The suspending official shall send the notice of proposed suspension to the last known street address, facsimile number, or email address of:
(1) The person, the person’s counsel, or an agent for service of process; and
(2) Any affiliates of the person, the counsel for those affiliates, or an agent for service of process, if suspension is also being proposed for such affiliates.

(f) Response from respondent—(1) Timing of response. Any response from the affected person and any affiliates thereof must be submitted to FHFA within the time period specified in the notice. If a response is submitted after the specified deadline, the suspending official may consider or disregard such response, in the suspending official’s discretion.
(2) Content of response. The response shall identify:
(i) Any information and argument in opposition to the proposed suspension;
(ii) Any specific facts that contradict the statements contained in the notice of proposed suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;
(iii) All criminal and civil proceedings not included in the notice of proposed suspension that grew out of facts relevant to the bases for the proposed suspension stated in such notice;
(iv) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies; and
(v) The names and identifying information for any affiliates of the affected person.

(g) Response from regulated entities—(1) Timing of response. Any response from the regulated entities must be submitted to FHFA within the time period specified in the notice. If a response is submitted after the specified deadline, the suspending official may consider or disregard such response, in the suspending official’s discretion.
(2) Content of response. (i) The response shall include:
(A) Any information that would indicate that suspension of the person in question could reasonably be expected to have a negative financial impact or other significant adverse effect on the financial or operating performance of the regulated entity; and
(B) Any existing contractual relationship with the person in question for which the regulated entity might request a limitation or qualification.
(ii) The response may include any other information that the regulated entity believes would be relevant to the proposed suspension determination, including but not limited to:
(A) Any information related to the factual basis for the proposed suspension;
(B) Any information about other known affiliates of the person;
(C) Recommendations for alternatives to suspension that could mitigate the risks presented by engaging in covered transactions with the respondent; and
(D) Recommendations for limitations or qualifications on the scope of the proposed suspension.


§ 1227.6 Final suspension order.

(a) Grounds for issuance. A suspending official may issue a final suspension order with respect to a respondent proposed for suspension if, based solely on the written record, the suspending official determines that there is adequate evidence that:
(1) The respondent engaged in covered misconduct; and
(2) The covered misconduct is of a type that would be likely to cause significant financial or reputational harm to a regulated entity or otherwise threaten the safe and sound operation of a regulated entity.

(b) Written record. The written record shall include any material submitted by the respondent and any material submitted by the regulated entities, as well as any other material that was considered by the suspending official in...
making the final determination, including any information related to the factors in paragraph (c) of this section. FHFA may independently obtain information relevant to the suspension determination for inclusion in the written record.

(c) Factors that may be considered by the suspending official. In determining whether or not to issue a final suspension order with respect to the respondent where the grounds for suspension are satisfied, the suspending official may also consider any factors that the suspending official determines may be relevant in light of the circumstances of the particular case, including but not limited to:

(1) The actual or potential harm or impact that results or may result from the covered misconduct;

(2) The frequency of incidents or duration of the covered misconduct;

(3) Whether there is a pattern of prior covered misconduct;

(4) Whether and to what extent the respondent planned, initiated, or carried out the covered misconduct;

(5) Whether the respondent has accepted responsibility for the covered misconduct and recognizes its seriousness;

(6) Whether the respondent has paid or agreed to pay all criminal, civil and administrative penalties or liabilities for the covered misconduct, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution;

(7) Whether the covered misconduct was pervasive within the respondent’s organization;

(8) The kind of positions held by the individuals involved in the covered misconduct;

(9) Whether the respondent’s organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence of the covered misconduct;

(10) Whether the respondent brought the covered misconduct to the attention of the appropriate government agency in a timely manner;

(11) Whether the respondent has fully investigated the circumstances surrounding the covered misconduct and, if so, made the result of the investigation available to the suspending official;

(12) Whether the respondent had effective standards of conduct and internal control systems in place at the time the covered misconduct occurred;

(13) Whether the respondent has taken appropriate disciplinary action against the individuals responsible for the covered misconduct; or

(14) Whether the respondent has had adequate time to eliminate the circumstances within the organization that led to the covered misconduct.

(d) Deadline for decision. The suspending official shall make a determination on whether to issue a final suspension order with respect to the respondent within thirty (30) calendar days of the deadline given for the respondent’s response in the notice of proposed suspension, unless the suspending official notifies the respondent in writing that additional time is needed.

(e) Determination not to issue final suspension order. If the suspending official determines that suspension is not appropriate with respect to the respondent, the suspending official shall provide prompt written notice of that determination to the respondent, the regulated entity, and all of the other regulated entities.

(f) Issuance of final suspension order—

(1) General. If the suspending official makes a final determination to suspend the respondent, the suspending official shall issue a final suspension order to each regulated entity regarding the respondent.

(2) Content of final suspension order. A final suspension order shall include:

(i) A statement of the suspension determination and supporting grounds, including a discussion of any relevant information submitted by the respondent or regulated entities;

(ii) Identification of each person and any affiliates thereof to which the suspension applies;

(iii) A description of the scope of the suspension, including the time period to which the suspension applies; and

(iv) A description of any limitations or qualifications that apply to the scope of the suspension, including modification of the conduct of covered
transactions that may be engaged in with the respondent.

(3) Notice to respondent required. The suspending official shall provide prompt written notice to the respondent of the final suspension order issued to the regulated entities with respect to such respondent.

(4) Content of notice. The notice of a final suspension order shall include:

(i) A statement of the suspension determination and supporting grounds, including a discussion of any relevant information submitted by the respondent; and

(ii) A copy of the final suspension order.

(g) Effective date. A final suspension order shall take effect on the date specified in the order, which shall be at least forty-five (45) calendar days after the date on which the order is signed by the suspending official.


§ 1227.7 Appeal to the Director.

(a) Opportunity to appeal. A respondent may submit an appeal to the Director within thirty (30) calendar days after the date a final suspension order has been signed. If the Director signed the final suspension order as the suspending official, the respondent has no appeal right under this section. The appeal shall be accompanied by a written brief specifically identifying the respondent’s objections to the final suspension order and the supporting reasons for such objections.

(b) Decision on appeal. The Director shall issue a written final decision on an appeal of a final suspension order based on the record submitted by the suspending official, together with any material submitted with an appeal. The Director may affirm, vacate or amend the suspension, or remand to the suspending official for further proceedings, in the discretion of the Director. If the Director does not take action on an appeal prior to the effective date of the order, the order shall take effect as if it had been affirmed by the Director, on the date specified in the order.

(c) Final agency action. The written final decision of the Director on an appeal of a final suspension order shall be the final agency action. If the Director does not take action on an appeal prior to the effective date of the order, the order shall be the final agency action.

(d) Exhaustion of administrative remedies. In order to fulfill the requirement to exhaust administrative remedies, a respondent must appeal a final suspension order to the Director as provided in this section prior to seeking judicial review of such order.

§ 1227.8 Posting of final suspension orders.

(a) Required posting. FHFA will publish on its Web site all final suspension orders issued by FHFA on the effective date of the order.

(b) Content of posting. Each posting on FHFA’s Web site shall include:

(1) The full name (where available) of each suspended person and any affiliates thereof subject to the final suspension order, in alphabetical order;

(2) A description of the time period for which the suspension applies; and

(3) A copy of each final suspension order applicable to the person and any affiliates thereof.

(c) Removal of names. FHFA will remove from the Web site all references to the suspension of a person and any affiliates thereof at such time as the suspension expires or is otherwise vacated.

§ 1227.9 Request for reconsideration.

(a) Time period for request. A suspended person may submit a request to the Director for reconsideration of a final suspension order at any time after the expiration of a twelve (12)-month period from the date the order took effect, but no such request may be made within twelve (12) months of a previous request for reconsideration from such person.

(b) Content of request. A request for reconsideration must be submitted in writing and state the specific grounds for relief from the final suspension order, which shall be limited to any new information that may indicate that engaging in covered transactions with a regulated entity would no longer present a risk of significant financial or reputational harm or threat to the safe and sound operation of a regulated entity.
§ 1228.1 Definitions.

For the purposes of this part, the following definitions apply:

Adjacent or contiguous property means property that borders the burdened community, provided that such adjacent or contiguous property may be separated from the burdened community by public right of way.

Burdened community means a community comprising all of the parcels or interests in real property encumbered by a single private transfer fee covenant or a series of separate private transfer fee covenants that require payment of private transfer fees to the same entity to be used for the same purposes.

Covered association means a nonprofit mandatory membership organization comprising owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant or other applicable law; or an organization described in section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. A covered association may include master and sub-associations, each of which is also a covered association.

Direct benefit means that the proceeds of a private transfer fee are used exclusively to support maintenance and improvements to encumbered properties, and acquisition, improvement, administration, and maintenance of property owned by the covered association of which the owners of the burdened property are members and used primarily for the benefit of the burdened community.

Subpart B [Reserved]
§ 1228.2 Restrictions.

The regulated entities shall not purchase, invest or otherwise deal in any mortgages on properties encumbered by private transfer fee covenants, securities backed by such mortgages, or securities backed by the income stream from such covenants, unless such covenants are excepted transfer fee covenants. The Federal Home Loan Banks shall not accept such mortgages or securities as collateral, unless such covenants are excepted transfer fee covenants.

§ 1228.3 Prospective application and effective date.

This part shall apply only to mortgages on properties encumbered by private transfer fee covenants if those covenants are created on or after February 8, 2011. This part shall not apply to mortgages on properties encumbered by private transfer fee covenants if those covenants are created pursuant to an agreement entered into before February 8, 2011, applicable to land that is identified in the agreement, and the agreement was in settlement of litigation or approved by a government agency or body. This part also applies to securities backed by mortgages to which this part applies, and to securities issued after February 8, 2011, backed by revenue from private transfer fees regardless of when the covenants were created. The regulated entities shall comply with this part not later July 16, 2012.

§ 1228.4 State restrictions unaffected.

This part does not affect state restrictions or requirements with respect to private transfer fee covenants, such as with respect to validity, enforceability, disclosures, or duration.

PART 1229—CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION

Subpart A—Federal Home Loan Banks

Sec.
1229.1 Definitions.
1229.2 Determination of a Bank's capital classification.
1229.3 Criteria for a Bank's capital classification.
§ 1229.1 Definitions.

For purposes of this subpart:

Capital distribution means any payment by the Bank, whether in cash or stock, of a dividend, any return of capital or retained earnings by the Bank to its shareholders, any transaction in which the Bank redeems or repurchases capital stock, or any transaction in which the Bank redeems, repurchases or retires any other instrument which is included in the calculation of its total capital.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(i) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(i)) and related regulations.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(ii) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(ii)) and related regulations.

Critical capital level for a Bank means an amount equal to 2 percent of the Bank’s total assets.

Executive officer means for a Bank any of the following persons, provided that the Director may from time to time add or remove persons, positions, or functions to or from the list (individually for one or more Banks or jointly for all the Banks) by communication to the affected Banks:

(i) Executive officers about whom the Banks must publicly disclose detailed compensation information under Regulation S–K, 17 CFR part 229, issued by the Securities and Exchange Commission;

(ii) Chief Financial Officer or an equivalent employee;

(iii) Chief Administrative Officer or an equivalent employee;

(iv) Chief Risk Officer or an equivalent employee;

(v) Asset and Liability Management officer, or an equivalent employee;

(vi) Chief Accounting Officer or an equivalent employee;

(vii) General Counsel or an equivalent employee;

(viii) Strategic Planning officer or an equivalent employee;

(ix) Internal Audit officer or an equivalent employee; or

(x) Chief Information Officer or an equivalent employee; or

(3) Any other individual, without regard to title:

(i) Who is in charge of a principal business unit, division or function; or

(ii) Who reports directly to the Bank’s chairman of the board of directors, vice chairman of the board of directors, president or chief operating officer.

Minimum capital requirement means the leverage and total capital requirements established for a Bank under section 6(a)(2) of the Bank Act (12 U.S.C. 1426(a)(2)) and related regulations, as such requirements may be revised by the Director, or any similar requirement established for a Bank by regulation, order, written agreement or other action.

New business activity when used in this subpart has the same meaning set forth in §1272.1 of this chapter.
§ 1229.2 Determination of a Bank’s capital classification.

(a) Quarterly determination. The Director shall determine the capital classification for each Bank no less often than once a quarter based on the capital classifications in §1229.3 of this subpart. The Director may make a determination with regard to a capital classification for a Bank more often than the minimum required under this paragraph or make a determination for one or more Banks without making a determination for all the Banks.

(b) Notification to a Bank. Before finalizing any action to classify a Bank under this section, the Director shall provide a Bank written notice describing the proposed action and an opportunity to submit information that the Bank considers relevant to the proposed action in accordance with §1229.12 of this subpart.

(c) Notification to the FHFA. A Bank shall provide written notification within ten calendar days of any event or development that has caused or is likely to cause its permanent or total capital to fall below the level necessary to maintain its capital classification at the level assigned in the most recent capital classification or reclassification determination by the Director or that is contained in the most recent notice of a proposed capital classification or reclassification provided under §1229.12(a) of this subpart.

§ 1229.3 Criteria for a Bank’s capital classification.

(a) Adequately capitalized. Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered adequately capitalized if, at the time of the determination under §1229.2(a) of this subpart, the Bank has sufficient permanent and total capital, as applicable, to meet or exceed its risk-based and minimum capital requirements.

(b) Undercapitalized. Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered undercapitalized if, at the time of the determination under §1229.2(a) of this subpart, the Bank does not have sufficient permanent or total capital, as applicable, to meet any one or more of its risk-based or minimum capital requirements but such deficiency is not of a magnitude to classify the Bank as significantly undercapitalized or critically undercapitalized.

(c) Significantly undercapitalized. Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered significantly undercapitalized if, at the time of the determination under §1229.2(a) of this subpart, the Bank has less than 75 percent of what is required to meet any one of its risk-based or minimum capital requirements but the magnitude of the Bank’s deficiency in total capital is not sufficient to classify it as critically undercapitalized.

(d) Critically undercapitalized. Except where the Director has exercised authority to reclassify a Bank, a Bank

Permanent capital means the retained earnings of a Bank, determined in accordance with generally accepted accounting principles in the United States (GAAP), plus the amount paid-in for the Bank’s Class B stock.

Risk-based capital requirement means any capital requirement established for a Bank under section 6(a)(3) of the Bank Act (12 U.S.C. 1426(a)(3)) and related regulations that ensures a Bank will hold sufficient permanent capital and reserves to support the risks that arise from its operations.

Tangible equity means, for a Bank, the paid-in value of its outstanding capital stock plus its retained earnings calculated in accordance with generally accepted accounting principles in the United States (GAAP) less the amount of any assets that would be intangible assets under GAAP.

Total capital means the sum of the Bank’s permanent capital, the amount paid-in for its Class A stock, the amount of any general allowances for losses, and the amount of any other instruments identified in a Bank’s capital plan that the Director has determined to be available to absorb losses incurred by such Bank.

shall be considered critically undercapitalized if, at the time of the determination under §1229.2(a) of this subpart, the total capital held by the Bank is less than or equal to the critical capital level for a Bank as defined under §1229.1 of this subpart.

§ 1229.4 Reclassification by the Director.

(a) Discretionary reclassification. Where the Director determines that any of the grounds described in paragraph (b) of this section exist, the Director may reclassify a Bank as:

(1) Undercapitalized, if it is otherwise classified as adequately capitalized;

(2) Significantly undercapitalized, if it is otherwise classified as undercapitalized; or

(3) Critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(b) Grounds for discretionary reclassification. Notwithstanding any other provision of this subpart, the Director may at any time reclassify a Bank under section 4(b) of this section if:

(1) The Director determines in writing that:

(i) The Bank is engaging in conduct that could result in the rapid depletion of permanent or total capital;

(ii) The value of collateral pledged to the Bank has decreased significantly; or

(iii) The value of property subject to mortgages owned by the Bank has decreased significantly.

(2) The Director determines, after notice to the Bank and opportunity for an informal hearing before the Director, that a Bank is in an unsafe and unsound condition; or

(3) The Director finds, under §1371(b) of the Safety and Soundness Act (12 U.S.C. 4631(b)), that the Bank is engaging in an unsafe and unsound practice because the Bank’s asset quality, management, earnings or liquidity were found to be less than satisfactory during the most recent examination, and any deficiency has not been corrected.

(c) Procedures. Before finalizing any action to reclassify a Bank under this section, the Director shall provide a Bank written notice describing the proposed action and an opportunity to submit information that the Bank considers relevant to the Director’s proposed action in accordance with §1229.12 of this subpart.

(d) Duration. Any condition, action or inaction by a Bank that is the basis for a decision to reclassify a Bank under this section or under any other authority provided the Director may be considered by the Director and form the basis of further, subsequent actions to reclassify the Bank until such time as the Bank remedies such condition or takes necessary action to correct such situation to the satisfaction of the Director.

(e) Reservation of authority. Nothing in this section shall prevent the Director from exercising any other authority under the Safety and Soundness Act, the Bank Act or any regulation to reclassify a Bank for reasons not set forth in paragraph (b) of this section or to take any other action against a Bank.

§ 1229.5 Capital distributions for adequately capitalized Banks.

(a) Restriction. An adequately capitalized Bank may not make a capital distribution if after doing so the Bank’s capital would be insufficient to maintain a classification of adequately capitalized. A Bank may not make a capital distribution if such distribution would violate any restriction on the redemption or repurchase of capital stock or the payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) and any other applicable regulation.

(b) Exception. Notwithstanding the restriction in paragraph (a) of this section, the Director may permit a Bank to repurchase or redeem its shares of stock if the transaction is made in connection with the issuance of additional Bank shares or obligations in at least an equivalent amount to the shares that are redeemed or repurchased and will reduce the Bank’s financial obligations or otherwise improve its financial condition. Any transaction under this paragraph also must conform with any restriction on the redemption or repurchase of Bank stock set forth in section 6 of the Bank Act (12 U.S.C. 1426) and in any other applicable regulation.
§ 1229.6 Mandatory actions applicable to undercapitalized Banks.

(a) Mandatory Actions by the Bank. A Bank that is classified as undercapitalized shall:

(1) Submit to the Director for approval a capital restoration plan that complies with the requirements and procedures established by §1229.11 of this part and receive approval from the Director for such plan;

(2) Fulfill all terms, conditions and obligations contained in the capital restoration plan as approved by the Director;

(3) Not make any capital distribution unless:
   (i) The distribution meets the requirements of §1229.5(b) and paragraphs (a)(3)(ii) and (iii) of this section and the Director has provided permission for such distribution as set forth in §1229.5(b);
   (ii) The capital distribution will not result in the Bank being reclassified as significantly undercapitalized or critically undercapitalized; and
   (iii) The capital distribution does not violate any restriction on the redemption or repurchase of capital stock or the declaration or payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or in any other applicable regulation;

(4) Not permit its average total assets in any calendar quarter to exceed its average total assets during the preceding calendar quarter, where such average is calculated based on the total amount of assets held by the Bank for each day in a quarter, unless:
   (i) The Director has approved the Bank’s capital restoration plan; and
   (ii) The Director determines that:
      (A) The increase in total assets is consistent with the approved capital restoration plan; and
      (B) The ratio of tangible equity to the Bank’s total assets is increasing at a rate sufficient to enable the Bank to become adequately capitalized within a reasonable time and consistent with any schedule established in the capital restoration plan; and

(5) Not acquire, directly or indirectly, an equity interest in any operating entity (other than as necessary to enforce a security interest granted to the Bank) nor engage in any new business activity unless:
   (i) The Director has approved the Bank’s capital restoration plan, the Bank is implementing the capital restoration plan and the Director determines that proposed acquisition or activity will further achievement of the goals set forth in that plan; or
   (ii) The Director determines that the proposed acquisition or activity will be consistent with the safe and sound operation of the Bank and will further the Bank’s compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) Mandatory reclassification by the Director. The Director shall reclassify an undercapitalized Bank as significantly undercapitalized if:

(1) The Bank does not submit a capital restoration plan that is substantially in compliance with §1229.11 of this subpart and within the time frame required.

(2) The Director does not approve the capital restoration plan submitted by the Bank;

(3) The Director determines that the Bank has failed in any material respect to comply with its approved capital restoration plan or fulfill any schedule for action established by that plan.

(c) Monitoring. The Director shall monitor the condition of any undercapitalized Bank and monitor the Bank’s compliance with the capital restoration plan and any restrictions or requirements imposed under this section or §1229.7 of this subpart. As part of this process, the Director shall review the capital restoration plan and any restrictions or requirements imposed on the undercapitalized Bank to determine whether such plan, restrictions or requirements are consistent with the safe and sound operation of the Bank and will further the Bank’s compliance with its risk-based and minimum capital requirements in a reasonable period of time.


§ 1229.7 Discretionary actions applicable to undercapitalized Banks.

(a) Discretionary safeguards. The Director may take any action with regard to an undercapitalized Bank that
may be taken with regard to a significantly undercapitalized Bank under section 1366 of the Safety and Soundness Act (12 U.S.C. 4616) or §1229.8 or §1229.9 if the Director determines that such action is necessary to assure the safe and sound operation of the Bank and its compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) Procedures. Before finalizing any action under this section, the Director shall provide a Bank with a written notice describing the proposed action or actions and an opportunity to submit information that the Bank considers relevant to the Director’s decision to take such action in accordance with §1229.12 of this subpart.

§ 1229.8 Mandatory actions applicable to significantly undercapitalized Banks.

A Bank that is classified as significantly undercapitalized:

(a) Shall submit to the Director for approval a capital restoration plan that complies with the requirements and procedures established by §1229.11 of this part and receive approval from the Director for such plan;

(b) Fulfill all terms, conditions and obligations contained in the capital restoration plan once the plan is approved by the Director;

(c) Shall not make any capital distribution that would result in the Bank being reclassified as critically undercapitalized or that would violate any restriction on the redemption or repurchase of capital stock or the payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or any applicable regulation;

(d) Shall not make any capital distribution not otherwise prohibited under paragraph (c) of this section absent the prior written approval of the Director, provided that the Director may approve such distribution only if the Director determines that:

(1) The capital distribution will enhance the ability of the Bank to meet its risk-based and minimum capital requirements promptly;

(2) The capital distribution will contribute to the long-term financial safety and soundness of the Bank;

(3) The capital distribution is otherwise in the public interest;

(e) Shall not without prior written approval of the Director pay a bonus to any executive officer, provided that for purposes of this paragraph a bonus shall include any amount paid or accruing to an executive officer under a profit sharing arrangement;

(f) Shall not without prior written approval of the Director compensate an executive officer at a rate exceeding the average rate of compensation of that officer during the 12 months preceding the calendar month in which the Bank became significantly undercapitalized, provided however, that for purposes of calculating the executive officer’s average rate of compensation, such compensation shall not include any bonus or profit sharing paid or accruing to the officer during the 12 month period;

(g) Comply with §1229.6(a)(4) and (a)(5) of this subpart; and

(h) Comply with any on-going restrictions or obligations that were imposed on the Bank by the Director under §1229.7 of this subpart.


§ 1229.9 Discretionary actions applicable to significantly undercapitalized Banks.

(a) Actions by the Director. The Director shall carry out this section by taking, at any time, one or more of the following actions with respect to a significantly undercapitalized Bank:

(1) Limit the increase in any obligations or class of obligations of the Bank, including any off-balance sheet obligations. Such limitation may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(2) Reduce the amount of any obligations or class of obligations held by the Bank, including any off-balance sheet obligations. Such reduction may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;
(3) Limit the increase in, or prohibit the growth of any asset or class of assets held by the Bank. Such limitation may be stated in an absolute dollar amount, as a percentage of current assets or in any other form chosen by the Director;

(4) Reduce the amount of any asset or class of asset held by the Bank. Such reduction may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(5) Acquire new capital in the form and amount determined by the Director, which specifically may include requiring a Bank to increase its level of retained earnings;

(6) Modify, limit or terminate any activity of the Bank that the Director determines creates excessive risk;

(7) Take steps to improve the management at the Bank by:
   (i) Ordering a new election for the Bank's board of directors in accordance with procedures established by the Director;
   (ii) Dismissing particular directors or executive officers, in accordance with section 1366(b)(5)(B) of the Safety and Soundness Act (12 U.S.C. 4616(b)(5)(B)), who held office for more than 180 days immediately prior to the date on which the Bank became undercapitalized, provided further that such dismissals shall not be considered removal pursuant to an enforcement action under section 1377 of the Safety and Soundness Act (12 U.S.C. 4636a) and shall not be subject to the requirements necessary to remove an officer or director under that section; or
   (iii) Ordering the Bank to hire qualified executive officers, the hiring of whom, prior to employment by the Bank and at the option of the Director, may be subject to review and approval by the Director; or

(8)(i) Reclassify a significantly undercapitalized Bank as critically undercapitalized if:
   (A) The Bank does not submit a capital restoration plan that is substantially in compliance with §1229.11 of this part and within the time frame required;
   (B) The Director does not approve the capital restoration plan submitted by the Bank; or
   (C) The Director determines that the Bank has failed to make reasonable, good faith efforts to comply with its approved capital restoration plan and fulfill any schedule established by that plan.

(ii) Subject to paragraph (c) of this section, the Director may reclassify a significantly undercapitalized Bank under paragraph (a)(8)(i) of this section at any time the grounds for such action exist, notwithstanding the fact that such grounds had formed the basis on which the Director reclassified a Bank from undercapitalized to significantly undercapitalized.

(b) Additional safeguards. The Director may require a significantly undercapitalized Bank to take any other action not specifically listed in this section if the Director determines such action will help ensure the safe and sound operation of the Bank and the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time more than any action specifically authorized under paragraph (a) of this section.

(c) Procedures. Before finalizing any action under this section, the Director shall provide a Bank written notice describing the proposed action or actions and an opportunity to submit information that the Bank considers relevant to the Director's decision to take such action in accordance with §1229.12 of this subpart.

§ 1229.10 Actions applicable to critically undercapitalized Banks.

(a) Appointment of conservator or receiver. Notwithstanding any other provision of federal or state law, the Director may appoint the FHFA as conservator or receiver of any Bank at any time after the Director determines that the Bank is, or the Director otherwise exercises authority to reclassify the Bank as, critically undercapitalized.

(b) Periodic determination—(1) Determination. Not later than 30 calendar days after the Director first determines that a Bank is, or the Director otherwise exercises authority to reclassify
§ 1229.11 Capital restoration plans.

(a) Contents. Each capital restoration plan submitted by a Bank shall set forth a plan to restore its permanent and total capital to levels sufficient to fulfill its risk-based and minimum capital requirements within a reasonable period of time. Such plan must be feasible given general market conditions and the conditions of the Bank and, at a minimum, shall:

(1) Describe the actions the Bank will take, including any changes that the Bank will make to member stock purchase requirements, to assure that it will become adequately capitalized within the meaning of § 1229.3(a) of this subpart and, if appropriate, to resolve any structural or long term causes for the capital deficiency;

(2) Specify the level of permanent and total capital the Bank will achieve and maintain and provide quarterly projections indicating how each component of total and permanent capital and the major components of income, assets and liabilities are expected to change over the term of the plan;

(3) Specify the types and levels of activities in which the Bank will engage during the term of the plan, including any new business activities that it intends to begin during such term;

(4) Describe any other actions the Bank intends to take to comply with any other requirements imposed on it under this subpart A of part 1229;

(5) Provide a schedule which sets forth dates for meeting specific goals and benchmarks and taking other actions described in the proposed capital restoration plan, including setting forth a schedule for it to restore its permanent and total capital to levels necessary for meeting its risk-based capital requirements.

(b) Service of plan. The Director shall make a determination in writing as to whether:

(1) The assets of the Bank are, and during the preceding 60 calendar days have been, less than its obligations to its creditors and others, provided that the Director shall consider as an obligation only that amount of outstanding consolidated obligations for which the Bank is primary obligor or for which the Bank has been ordered to make payments of principal or interest on behalf of another Bank, or is actually making payments of principal or interest on behalf of another Bank; or

(2) Mandatory receivership. If the Director determines that the conditions described in either paragraph (b)(1)(i) or (b)(1)(ii) of this section applies to a Bank, the Director shall appoint the FHFA as receiver for the Bank. The appointment of the FHFA as receiver under this paragraph shall immediately terminate any conservatorship established for the Bank.

(c) Determination not required. A determination under paragraph (b)(1) of this section shall not be required during any period in which the FHFA serves as receiver for a Bank.

(d) Judicial review. If the Director appoints the FHFA as conservator or receiver of a Bank under paragraph (a) or (b)(2) of this section, the Bank may within 30 days of such appointment bring an action in the United States district court for the judicial district in which the Bank was established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) or in the United States District Court for the District of Columbia, for an order requiring the FHFA to remove itself as conservator or receiver.

(e) Other applicable actions. Until such time as FHFA is appointed as conservator or receiver for a critically undercapitalized Bank, a critically undercapitalized Bank shall be subject to all mandatory restrictions or obligations applicable to a significantly undercapitalized Bank under § 1229.8 of this subpart and will remain subject to any on-going restrictions or obligations that the Director imposed on the Bank under § 1229.7 or § 1229.9 of this subpart, or any restrictions or obligations that are applicable to the Bank under the terms of an approved capital restoration plan.

and minimum capital requirements; and

(6) Address such other items that the Director shall provide in writing in advance of such submission.

(b) **Deadline for submission.** A Bank must submit a proposed capital restoration plan no later than 15 business days after it receives written notification that such a plan is required either because the notice specifically states that the Director has required the submission of a plan or the notice indicates that the Bank’s capital classification or reclassification is to a category for which a capital restoration plan is a mandatory action required of the Bank. The Director may extend this deadline if the Director determines that such extension is necessary. Any such extension shall be in writing and provide a specific date by which the Bank must submit its proposed capital restoration plan.

(c) **Review of the plan by the Director.** The Director shall have 30 calendar days from the date the Bank submits a proposed capital restoration plan to approve or disapprove the plan. The Director may extend the period for consideration of a capital restoration plan for a single 30 calendar day period by providing the Bank with written notification that the decision deadline has been extended. The Director shall provide the Bank with written notification of the decision to approve or not approve a proposed capital restoration plan. If the Director does not approve the capital restoration plan, the written notification of such decision shall provide the reasons for the disapproval.

(d) **Resubmission.** If the Director does not approve the Bank’s proposed capital restoration plan, the Bank shall submit a new capital restoration plan acceptable to the Director within 30 calendar days of the date that the Bank was notified of the disapproval. The Director may extend the period for the Bank’s submission of a new acceptable capital restoration plan upon a determination that such extension is in the public interest. The Director shall provide the Bank written notice of the extension and include in such notice the date by which the Bank must submit an acceptable plan.

(e) **Amendments.** The Director, in his or her sole discretion, may approve amendments to an approved capital restoration plan if, after consideration of changes in conditions of the Bank, changes in market conditions and other relevant factors, the Director determines that such amendments are consistent with the restoration of the Bank’s capital to levels necessary to meet its risk-based and minimum capital requirements in a reasonable period of time and with the safe and sound operations of the Bank.

(f) **Effectiveness of provisions.** A Bank is obligated to implement and fulfill all provisions of an approved capital restoration plan. Unless expressly addressed by the terms of the capital restoration plan, a Bank remains bound by each and every obligation and requirement set forth in the approved capital restoration plan until such requirement or obligation is amended under paragraph (e) of this section or terminated in writing by the Director.

(g) **Appointment of conservator or receiver.** Notwithstanding any other provision of federal or state law, the Director may appoint the FHFA as conservator or receiver of any Bank that is classified as undercapitalized or significantly undercapitalized if the Bank fails to submit a capital restoration plan acceptable to the Director within the time frames established by this section or if the Bank materially fails to implement any capital restoration plan that has been approved by the Director. A Bank may within 30 days of such appointment bring an action in the United States district court for the judicial district in which the Bank is established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) or in the United States District Court for the District of Columbia, for an order requiring the FHFA to remove itself as conservator or receiver.

shall provide the Bank with written notification of the proposed action that states the reasons for the proposed action and describes the information on which the proposed action is based. The notice required under this paragraph may be combined with the notice of a proposed supervisory action required under paragraph (b) of this section. The Director also may combine a notice informing the Bank of its capital classification and simultaneously informing the Bank that the Director intends to reclassify a Bank to a lower capital classification category.

(b) Notice of a supervisory action. Before finalizing any action or actions authorized under §1229.7 or §1229.9 of this subpart, the Director shall provide the Bank with written notification of the proposed action that states the reasons for the proposed action and describes the information on which the proposed action is based. The notice required under this paragraph may be combined with the notice of a proposed action to classify or reclassify the Bank required under paragraph (a) of this section.

(c) Bank response. During the 30 calendar day period beginning on the date that the Bank is provided notice under paragraph (a) or (b) of this section of a proposed action or actions, a Bank may submit to the Director any information that the Bank considers relevant or appropriate for the Director to consider in determining whether to finalize the proposed action. The Director may, in his or her sole discretion, convene an informal hearing with representatives of the Bank to receive or discuss any such information. The Director, in his or her sole discretion, also may extend the period in which the Bank may respond to a notice for an additional 30 calendar days for good cause, or shorten such comment period if the Director determines the condition of the Bank requires faster action or a shorter comment period or if the Bank consents to a shorter comment period. The Director shall inform the Bank in writing, which may be provided as part of the notice required under paragraphs (a) or (b) of this section, of any decision to extend or shorten the comment period. The failure of a Bank to provide information during the allotted comment period will waive any right of the Bank to comment on the proposed action.

(d) Final action. At the earlier of the completion of the comment period established under paragraph (c) or the receipt of information provided by the Bank during such period, the Director shall determine whether to take the proposed action or actions that were the subject of the notice under paragraphs (a) or (b) of this section, after taking into consideration any information provided by the Bank. Such notice shall respond to any information submitted by the Bank. Any final order that the Bank take action, refrain from action or comply with any other requirement that was the subject of a notice under paragraph (b) of this section shall take effect upon the Bank's receipt of the notice required under this paragraph, unless a different effective date is set forth in this notice, and shall remain in effect and binding on the Bank until terminated in writing by the Director or until any terms and conditions for termination, as set forth in the notice, have been met.

(e) Final actions under this section. Any final decision that the Bank take action, refrain from action or comply with any other requirement that was the subject of a notice under paragraph (b) of this section shall constitute an order under the Safety and Soundness Act. The Director in his or her discretion may apply to the United States District Court for the District of Columbia or to the United States district court for the judicial district in which the Bank in question is established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) for the enforcement of such order, as allowed under §1375 of the Safety and Soundness Act (12 U.S.C. 4635). In addition, a Bank or any executive officer or director of a Bank can be subject to enforcement action, including the imposition of civil monetary penalties, under §1371, §1372 or §1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, or 4636) for failure to comply with such an order.

(f) Judicial review. A Bank that is not classified as critically undercapitalized may obtain judicial review of any final capital classification decision or of any final decision to take supervisory action made by the Director under
§ 1229.13

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§ 1229.2, § 1229.4, § 1229.7 or § 1229.9 in accordance with the requirements and procedures set forth in §1369D of the Safety and Soundness Act (12 U.S.C. 4623).

Subpart B—Enterprises


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

Sec. 1230.1 Purpose.
1230.2 Definitions.
1230.3 Prohibition and withholding of executive compensation.

1230.4 Prior approval of termination agreements of Enterprises.
1230.5 Submission of supporting information.

AUTHORITY: 12 U.S.C. 1427, 1431(1)(5), 1452(h), 4562(6), 4562(12), 4513, 4514, 4517, 4518, 4518a, 4520, 4631, 4632, 4636, and 1723a(d).

SOURCE: 79 FR 4393, Jan. 28, 2014, 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:


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.

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:
§ 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, order, or written agreement, and insider abuse with respect to the regulated entity or the Office of Finance.

(c) Prohibition on setting compensation by Director. In carrying out paragraph (a) of this section, the Director may not prescribe or set a specific level or range of compensation.

(d) Advance notice to Director of certain compensation actions. (1) A regulated entity or the Office of Finance shall not, without providing the Director at least 60 days’ advance written notice, enter into any written arrangement that provides incentive awards to any executive officer or officers.

(2) A regulated entity or the Office of Finance shall not, without providing the Director at least 30 days’ advance written notice, enter into any written arrangement that:
§ 1230.4 Prior approval of termination agreements of Enterprises.

(a) In general. An Enterprise may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by the Director.

(b) Covered agreements or contracts. An agreement or contract that provides for termination payments to an executive officer of an Enterprise that was entered into before October 28, 1992, is not retroactively subject to approval or disapproval by the Director. However, any renegotiation, amendment, or change to such an agreement or contract shall be considered as entering into an agreement or contract that is subject to approval by the Director.

(c) Factors to be taken into account. In making the determination whether to approve or disapprove termination benefits, the Director may consider:

(1) Whether the benefits provided under the agreement or contract are comparable to benefits provided under such agreements or contracts for officers of other public or private entities involved in financial services and housing interests who have comparable duties and responsibilities;

(2) The factors set forth in §1230.3(b); and

(3) Such other information as deemed appropriate by the Director.

(d) Exception to prior approval. An employment agreement or contract subject to prior approval of the Director under this section may be entered into prior to that approval, provided that such agreement or contract specifically provides notice that termination benefits under the agreement or contract shall not be effective and no payments shall be made under such agreement or contract unless and until approved by the Director. Such notice

(1) Provides an executive officer a term of employment for a term of six months or more; or

(ii) In the case of a Bank or the Office of Finance, provides compensation to any executive officer in connection with the termination of employment, or establishes a policy of compensation in connection with the termination of employment.

(3) A regulated entity or the Office of Finance shall not, without providing the Director at least 30 days' advance written notice, pay, disburse, or transfer to any executive officer, annual compensation (where the annual amount has changed); pay for performance or other incentive pay; any amounts under a severance plan, change-in-control agreement, or other separation agreement; any compensation that would qualify as direct compensation for purposes of securities filings; or any other element of compensation identified by the Director prior to the notice period.

(4) Notwithstanding the foregoing review periods, a regulated entity or the Office of Finance shall provide five business days' advance written notice to the Director before committing to pay compensation of any amount or type to an executive officer who is being newly hired.

(5) The Director reserves the right to extend any of the foregoing review periods, and may do so in the Director's discretion, upon notice to the regulated entity or the Office of Finance. Any such notice shall set forth the number of business or calendar days by which the review period is being extended.

(e) Withholding, escrow, prohibition. During the review period required by paragraph (d) of this section, or any extension thereof, a regulated entity or the Office of Finance shall not execute the compensation action that is under review unless the Director provides written notice of approval or non-objection. During a review under paragraph (a) or (d) of this section, or at any time before an executive compensation action has been taken, the Director may, by written notice, require a regulated entity or the Office of Finance to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account, or may prohibit the action.

1This date refers to the date of enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.
should make clear that alteration of benefit plans subsequent to FHFA approval under this section, which affect final termination benefits of an executive officer, requires review at the time of the individual’s termination from the Enterprise and prior to the payment of any benefits.

(e) Effect of prior approval of an agreement or contract. The Director’s approval of an executive officer’s termination of employment benefits shall not preclude the Director from making any subsequent determination under this section to prohibit and withhold executive compensation.

(f) Form of approval. The Director’s approval pursuant to this section may occur in such form and manner as the Director shall provide through written notice to the regulated entities or the Office of Finance.

§ 1230.5 Submission of supporting information.

In support of the reviews and decisions provided for in this part, the Director may issue guidance, orders, or notices on the subject of information submissions by the regulated entities and the Office of Finance.

PART 1231—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.
1231.1 Purpose.
1231.2 Definitions.
1231.3 Golden parachute payments.
1231.4 [Reserved]
1231.5 Applicability in the event of receivership.
1231.6 Filing instructions.

AUTHORITY: 12 U.S.C. 4518(e), 4518a, 4526.

SOURCE: 73 FR 53357, Sept. 16, 2008, unless otherwise noted.

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) by setting forth the standards that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments and by setting forth prohibited and permissible indemnification payments that regulated entities and the Office of Finance may make to entity-affiliated parties.

[79 FR 4398, Jan. 28, 2014]

§ 1231.2 Definitions.

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

Benefit plan means any plan, contract, agreement, or other arrangement which is an “employee welfare benefit plan” as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services, or cafeteria plans; provided however, that such term shall not include any plan intended to be subject to paragraphs (2)(i) and (v) of the term golden parachute payment as defined in this section.

Bona fide deferred compensation plan or arrangement means any plan, contract, agreement, or other arrangement whereby:

(1) An entity-affiliated party voluntarily elects to defer all or a portion of the reasonable compensation, wages, or fees paid for services rendered which otherwise would have been paid to such party at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals) and the regulated entity or the Office of Finance either:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits and related expenses, except that the assets of such trust may be available to satisfy claims of creditors of the regulated entities or the Office of Finance in the case of insolvency; or

(2) A regulated entity or the Office of Finance establishes a nonqualified deferred compensation plan or arrangement whereby:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits and related expenses, except that the assets of such trust may be available to satisfy claims of creditors of the regulated entities or the Office of Finance in the case of insolvency; or
(i) Primarily for the purpose of providing benefits for certain entity-affiliated parties in excess of the limitations on contributions and benefits imposed by sections 401(a)(17), 402(g), 415, or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 401(a)(17), 402(g), 415); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management, or highly compensated employees (excluding severance payments described in paragraph (2)(v) of the term golden parachute payment as defined in this section and permissible golden parachute payments described in §1231.3(b)); and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (1) and (2) of this definition, the following requirements shall apply:

(i) The plan was in effect at least one year prior to any of the events described in paragraph (1)(ii) of the term golden parachute payment as defined in this section and permissible golden parachute payments described in §1231.3(b)); and

(ii) Any payment made pursuant to such plan is made in accordance with the terms of the plan as in effect no later than one year prior to any of the events described in paragraph (1)(ii) of the term golden parachute payment as defined in this section;

(iii) The entity-affiliated party has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under such plan;

(iv) Benefits under such plan are accrued each period only for current or prior service rendered to the employer (except that an allowance may be made for service with a predecessor employer);

(v) Any payment made pursuant to such plan is not based on any discretionary acceleration of vesting or accrual of benefits which occurs at any time later than one year prior to any of the events described in paragraph (1)(ii) of the term golden parachute payment as defined in this section;

(vi) The regulated entity or the Office of Finance has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP, or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits and related expenses, except that the assets of such trust may be available to satisfy claims of the regulated entity's creditors or the Office of Finance's creditors in the case of insolvency; and

(vii) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

Entity-affiliated party means:

(1) With respect to the Office of Finance, any director, officer, or manager of the Office of Finance; and

(2) With respect to a regulated entity:

(i) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(ii) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;

(iii) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant) if:

(A) The independent contractor knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice; and

(B) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(iv) Any not-for-profit corporation that receives its principal funding, on
an ongoing basis, from any regulated entity.

Golden parachute payment means:

(1) Any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity or the Office of Finance for the benefit of any current or former entity-affiliated party pursuant to an obligation of such regulated entity or the Office of Finance that:
   (i) Is contingent on, or by its terms is payable on or after, the termination of such party’s primary employment or affiliation with the regulated entity or the Office of Finance; and
   (ii) Is received on or after, or is made in contemplation of, any of the following events:
      (A) The insolvency (or similar event) of the regulated entity which is making the payment;
      (B) The appointment of any conservator or receiver for such regulated entity; or
      (C) The regulated entity is in a troubled condition.

(2) Exceptions. The term golden parachute payment shall not include:
   (i) Any payment made pursuant to a pension or retirement plan that is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or pursuant to a pension or other retirement plan that is governed by the laws of any foreign country;
   (ii) Any payment made pursuant to a “benefit plan” as that term is defined in this section;
   (iii) Any payment made pursuant to a “bona fide deferred compensation plan or arrangement” as that term is defined in this section;
   (iv) Any payment made by reason of death or by reason of termination caused by the disability of an entity-affiliated party; or
   (v) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement that provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement; provided that:
      (A) No employee shall receive any such payment that exceeds the base compensation paid to such employee during the 12 months (or such longer period or greater benefit as the Director shall consent to) immediately preceding termination of employment, resignation, or early retirement, and such severance pay plan or arrangement shall not have been adopted, or modified to increase the amount or scope of severance benefits, at a time when the regulated entity or the Office of Finance is in a condition specified in paragraph (1)(ii) of the term golden parachute payment as defined in this section, or in contemplation of such a condition, without the prior written consent of the Director; and
      (B) If an employee is an executive officer, as “executive officer” is defined under 12 CFR 1230.2, and such employee’s base salary exceeds $300,000, then the exception provided under this paragraph (2)(v) shall not apply to that employee; or
   (vi) Any severance or similar payment that is required to be made pursuant to a state statute or foreign law that is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria).

Nondiscriminatory means that the plan, contract, or arrangement in question applies to all employees of a regulated entity or the Office of Finance who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract, or arrangement may provide different benefits based only on objective criteria such as salary, total compensation, length of service, job grade, or classification, which are applied on a proportionate basis (with a variance in severance benefits relating to any criterion of plus or minus ten percent) to groups of employees consisting of not less than the lesser of 33 percent of employees or 1,000 employees.

Payment means:

(1) Any direct or indirect transfer of any funds or any asset;
(2) Any forgiveness of any debt or other obligation;
§ 1231.3 Golden parachute payments.

(a) Prohibited golden parachute payments. No regulated entity or the Office of Finance shall make or agree to make any golden parachute payment, except as provided in this part.

(b) Permissible golden parachute payments. (1) A regulated entity or the Office of Finance may agree to make or may make a golden parachute payment if and to the extent that:

(i) The Director determines that such a payment or agreement is permissible; or

(ii) Such an agreement is made in order to hire a person to become an entity-affiliated party either at a time when the regulated entity or the Office of Finance satisfies, or in an effort to prevent it from imminently satisfying, any of the criteria set forth in paragraph (1)(ii) of the term golden parachute payment as defined in §1231.2, and the Director consents in writing to the amount and terms of the golden parachute payment. Such consent by the Director shall not improve the entity-affiliated party’s position in the event of the insolvency of the regulated entity or the Office of Finance since such consent can neither bind a receiver nor affect the provability of receivership claims; or

(iii) Such a payment is made pursuant to an agreement which provides for a reasonable severance payment, not to exceed 12 months salary, to an entity-affiliated party in the event of a change in control of the regulated entity or the Office of Finance; provided, however, that a regulated entity or the Office of Finance shall obtain the consent of the Director prior to making such a payment, and this paragraph (b)(1)(iii) shall not apply to any change in control of a regulated entity that results from the regulated entity being placed into conservatorship or receivership; and

(iv) A regulated entity or the Office of Finance making a request pursuant to paragraphs (b)(1)(i) through (ii) of this section shall demonstrate that it does not possess and is not aware of any information, evidence, documents, or other materials that would indicate that there is a reasonable basis to believe, at the time such payment is proposed to be made, that:

(A) The entity-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity or the Office of Finance that is likely to have a material adverse effect on the regulated entity or the Office of Finance;
(B) The entity-affiliated party is substantially responsible for the insolvency of, the appointment of a conservator or receiver for, or the troubled condition of the regulated entity or the Office of Finance;
(C) The entity-affiliated party has materially violated any applicable Federal or State law or regulation that has had or is likely to have a material effect on the regulated entity or the Office of Finance; and
(D) The entity-affiliated party has violated or conspired to violate sections 215, 657, 1006, 1014, or 1343 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a “financial institution” as the term is defined in title 18 of the United States Code (18 U.S.C. 20).

(2) In making a determination under paragraphs (b)(1)(i) through (iii) of this section, the Director may consider:
(i) Whether, and to what degree, the entity-affiliated party was in a position of managerial or fiduciary responsibility;
(ii) The length of time the entity-affiliated party was affiliated with the regulated entity or the Office of Finance, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and
(iii) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation, order, or written agreement, and the level of willful misconduct, breach of fiduciary duty, and malfeasance on the part of the entity-affiliated party.

§ 1231.6 Filing instructions.

(a) Scope. This section contains the procedures to apply for the consent of the Director to make golden parachute payments under §1231.3(b) (including entering into agreements to make such payments) or to make excess non-discriminatory severance plan payments under paragraph (2)(v) of the term golden parachute payment as defined in §1231.2.

(b) Where to file. A regulated entity or the Office of Finance must submit a letter application to the Manager, Executive Compensation, Division of Supervision Policy and Support, or to such other person as FHFA may direct.

(c) Content of filing. The letter application must contain the following:
(1) The reasons why the regulated entity or the Office of Finance seeks to make the payment;
(2) An identification of the entity-affiliated party who will receive the payment;
(3) A copy of any contract or agreement regarding the subject matter of the filing;
(4) The cost of the proposed payment and its impact on the capital and earnings of the regulated entity;
(5) The reasons why the consent to the payment should be granted; and
(6) Certification and documentation as to each of the factors listed in §1231.3(b)(1)(iv).

(d) Additional information. FHFA may request additional information at any time during the processing of the letter application.

(e) Written notice. FHFA shall provide the applicant with written notice of the decision as soon as it is rendered.

§ 1231.4 [Reserved]

§ 1231.5 Applicability in the event of receivership.

The provisions of this part, or any consent or approval granted under the provisions of this part by FHFA, shall not in any way bind any receiver of a regulated entity in receivership. Any consent or approval granted under the provisions of this part by FHFA shall not in any way obligate FHFA or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification, or other agreement. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of an entity-affiliated party contrary to section 1318(e)(3) of the Safety and Soundness Act (12 U.S.C. 4518(e)(3)).

[79 FR 4400, Jan. 28, 2014]
PART 1233—REPORTING OF FRAUDULENT FINANCIAL INSTRUMENTS

Sec. 1233.1 Purpose.
1233.2 Definitions.
1233.3 Reporting.
1233.4 Internal controls, policies, procedures, and training.
1233.5 Protection from liability for reports.
1233.6 Supervisory action.


SOURCE: 75 FR 4258, Jan. 27, 2010, unless otherwise noted.

§ 1233.1 Purpose.

The purpose of this part is to implement the Safety and Soundness Act by requiring each regulated entity to report to FHFA upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. In addition, each regulated entity must establish and maintain internal controls, policies, procedures, and operational training to discover such transactions.

§ 1233.2 Definitions.

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

Entity-affiliated party means—
(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;
(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;
(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant);
(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and
(5) The Office of Finance.

Financial instrument means any legally enforceable agreement, certificate, or other writing, in hardcopy or electronic form, having monetary value including, but not limited to, any agreement, certificate, or other writing evidencing an asset pledged as collateral to a Bank by a member to secure an advance by the Bank to that member.

Fraud means a misstatement, misrepresentation, or omission that cannot be corrected and that was relied upon by a regulated entity to purchase or sell a loan or financial instrument.

Possible fraud means that a regulated entity has a reasonable belief, based upon a review of information available to the regulated entity, that fraud may be occurring or has occurred.

Purchased or sold or relating to the purchase or sale means any transaction involving a financial instrument including, but not limited to, any purchase, sale, other acquisition, or creation of a financial instrument by the member of a Bank to be pledged as collateral to the Bank to secure an advance by the Bank to that member, the pledging by a member to a Bank of such financial instrument to secure such an advance, the making of a grant by a Bank under its affordable housing program or community investment program, and the effecting of a wire transfer or other form of electronic payments transaction by the Bank.

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Federal Housing Finance Agency

(b) Format for reporting. (1) The report shall be in such format and shall be filed in accordance with such procedures that the Director may prescribe. (2) The Director may require a regulated entity to provide such additional or continuing information relating to such fraud or possible fraud that the Director deems appropriate. (3) A regulated entity may satisfy the reporting requirements of this section by submitting the required information on a form or in another format used by any other regulatory agency, provided it has first obtained the prior written approval of the Director.

(c) Retention of records. A regulated entity or entity-affiliated party shall maintain a copy of any report submitted to the Director and the original or business record equivalent of any supporting documentation for a period of five years from the date of submission.

(d) Nondisclosure. (1) A regulated entity or entity-affiliated party may not disclose to any person that it has submitted a report to the Director pursuant to this section, unless it has first obtained the prior written approval of the Director. (2) The restriction in paragraph (d)(1) of this section does not prohibit a regulated entity from—(i) Disclosing or reporting such fraud or possible fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or (ii) Taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the fraud or possible fraud.

(e) No waiver of privilege. A regulated entity does not waive any privilege it may possess under any applicable law as a consequence of reporting fraud or possible fraud under this part.

§ 1233.4 Internal controls, policies, procedures, and training.

(a) In general. Each regulated entity shall establish and maintain adequate and efficient internal controls, policies, procedures, and an operational training program to discover and report fraud or possible fraud in connection with the purchase or sale of any loan or financial instrument.

(b) Examination. The examination by FHFA of fraud reporting programs of each regulated entity includes an evaluation of the effectiveness of the internal controls, policies, procedures, and operational training program in place to minimize risks from fraud and to report fraud or possible fraud to FHFA in accordance with this regulation.

§ 1233.5 Protection from liability for reports.

As provided by section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(b)), a regulated entity that, in good faith, submits a report pursuant to this part, and any entity-affiliated party, that, in good faith, submits or requires a person to submit a report pursuant to this part, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report, or for any failure to provide notice of such report to the person who is the subject of such report, or any other persons identified in the report.

§ 1233.6 Supervisory action.

Failure by a regulated entity to comply with this part may subject the regulated entity or the board members, officers, or employees thereof to supervisory action by FHFA, including but not limited to, cease-and-desist proceedings and civil money penalties.

PART 1234—CREDIT RISK RETENTION

Subpart A—Authority, Purpose, Scope and Definitions

Sec.
1234.1 Purpose, scope and reservation of authority.
1234.2 Definitions.

Subpart B—Credit Risk Retention

1234.3 Base risk retention requirement.
1234.4 Standard risk retention.
1234.5 Revolving pool securitizations.
1234.6 Eligible ABCP conduits.
§ 1234.1 Purpose, scope and reservation of authority.

(a) Purpose. This part requires securitizers to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party in a transaction within the scope of section 15G of the Exchange Act. This part specifies the permissible types, forms, and amounts of credit risk retention, and it establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or that otherwise qualify for an exemption.

(b) Scope. (1) Effective December 24, 2015, this part will apply to any securitizer that is an entity regulated by the Federal Housing Finance Agency with respect to a securitization transaction collateralized by residential mortgages.

(2) Effective December 24, 2016, this part will apply to any securitizer that is an entity regulated by the Federal Housing Finance Agency with respect to a securitization transaction collateralized by assets other than residential mortgages.

(c) Reservation of authority. Nothing in this part shall be read to limit the authority of the Director of the Federal Housing Finance Agency to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, or violations of law.

[79 FR 77765, Dec. 24, 2014]

§ 1234.2 Definitions.

For purposes of this part, the following definitions apply:

ABS interest means:

(1) Any type of interest or obligation issued by an issuing entity, whether or not in certificated form, including a security, obligation, beneficial interest or residual interest (other than an uncertificated regular interest in a REMIC that is held by another REMIC, where both REMICs are part of the same structure and a single REMIC in that structure issues ABS interests to investors, or a non-economic residual interest issued by a REMIC), payments on which are primarily dependent on the cash flows of the collateral owned or held by the issuing entity; and

(2) Does not include common or preferred stock, limited liability interests, partnership interests, trust certificates, or similar interests that:

(i) Are issued primarily to evidence ownership of the issuing entity; and

(ii) The payments, if any, on which are not primarily dependent on the cash flows of the collateral held by the issuing entity; and

(3) Does not include the right to receive payments for services provided by the holder of such right, including servicing, trustee services and custodial services.

Affiliate of, or a person affiliated with, a specified person means a person that directly, or indirectly through one or
more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Appropriate Federal banking agency has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Asset means a self-liquidating financial asset (including but not limited to a loan, lease, mortgage, or receivable).

Asset-backed security has the same meaning as in section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)).

Collateral means, with respect to any issuance of ABS interests, the assets that provide the cash flow and the servicing assets that support such cash flow for the ABS interests irrespective of the legal structure of issuance, including security interests in assets or other property of the issuing entity, fractional undivided property interests in the assets or other property of the issuing entity, or any other property interest in or rights to cash flow from such assets and related servicing assets. Assets or other property collateralize an issuance of ABS interests if the assets or property serve as collateral for such issuance.

Commercial real estate loan has the same meaning as in §1234.14.

Commission means the Securities and Exchange Commission.

Control, including the terms “controlling,” “controlled by” and “under common control with”:

(1) Means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) Without limiting the foregoing, a person shall be considered to control another person if the first person:

(i) Owns, controls or holds with power to vote 25 percent or more of any class of voting securities of the other person; or

(ii) Controls in any manner the election of a majority of the directors, trustees or persons performing similar functions of the other person.

Credit risk means:

(1) The risk of loss that could result from the failure of the borrower in the case of a securitized asset, or the issuing entity in the case of an ABS interest in the issuing entity, to make required payments of principal or interest on the asset or ABS interest on a timely basis;

(2) The risk of loss that could result from bankruptcy, insolvency, or a similar proceeding with respect to the borrower or issuing entity, as appropriate; or

(3) The effect that significant changes in the underlying credit quality of the asset or ABS interest may have on the market value of the asset or ABS interest.

Creditor has the same meaning as in 15 U.S.C. 1602(g).

Depositor means:

(1) The person that receives or purchases and transfers or sells the securitized assets to the issuing entity;

(2) The sponsor, in the case of a securitization transaction where there is not an intermediate transfer of the assets from the sponsor to the issuing entity; or

(3) The person that receives or purchases and transfers or sells the securitized assets to the issuing entity in the case of a securitization transaction where the person transferring or selling the securitized assets directly to the issuing entity is itself a trust.

Eligible horizontal residual interest means, with respect to any securitization transaction, an ABS interest in the issuing entity:

(1) That is an interest in a single class or multiple classes in the issuing entity, provided that each interest meets, individually or in the aggregate, all of the requirements of this definition;

(2) With respect to which, on any payment date or allocation date on which the issuing entity has insufficient funds to satisfy its obligation to pay all contractual interest or principal due, any resulting shortfall will reduce amounts payable to the eligible horizontal residual interest prior to any reduction in the amounts payable to any other ABS interest, whether through loss allocation, operation of the priority of payments, or any other governing contractual provision (until the amount of such ABS interest is reduced to zero); and
§ 1234.2

(3) That, with the exception of any non-economic REMIC residual interest, has the most subordinated claim to payments of both principal and interest by the issuing entity.

Eligible horizontal cash reserve account means an account meeting the requirements of § 1234.4(b).

Eligible vertical interest means, with respect to any securitization transaction, a single vertical security or an interest in each class of ABS interests in the issuing entity issued as part of the securitization transaction that constitutes the same proportion of each such class.

Federal banking agencies means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

GAAP means generally accepted accounting principles as used in the United States.

Issuing entity means, with respect to a securitization transaction, the trust or other entity:

(1) That owns or holds the pool of assets to be securitized; and

(2) In whose name the asset-backed securities are issued.

Majority-owned affiliate of a person means an entity (other than the issuing entity) that, directly or indirectly, majority controls, is majority controlled by or is under common majority control with, such person. For purposes of this definition, majority control means ownership of more than 50 percent of the equity of an entity, or ownership of any other controlling financial interest in the entity, as determined under GAAP.

Originator means a person who:

(1) Through an extension of credit or otherwise, creates an asset that collateralizes an asset-backed security; and

(2) Sells the asset directly or indirectly to a securitizer or issuing entity.

REMIC has the same meaning as in 26 U.S.C. 860D.

Residential mortgage means:

(1) A transaction that is a covered transaction as defined in §1026.43(b) of Regulation Z (12 CFR 1026.43(b)(1)); and

(2) Any transaction that is exempt from the definition of “covered transaction” under §1026.43(a) of Regulation Z (12 CFR 1026.43(a)); and

(3) Any other loan secured by a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium or cooperative unit and, if used as a residence, a mobile home or trailer.

Retaining sponsor means, with respect to a securitization transaction, the sponsor that has retained or caused to be retained an economic interest in the credit risk of the securitized assets pursuant to subpart B of this part.

Securitization transaction means a transaction involving the offer and sale of asset-backed securities by an issuing entity.

Securitized asset means an asset that:

(1) Is transferred, sold, or conveyed to an issuing entity; and

(2) Collateralizes the ABS interests issued by the issuing entity.

Securitizer means, with respect to a securitization transaction, either:

(1) The depositor of the asset-backed securities (if the depositor is not the sponsor); or

(2) The sponsor of the asset-backed securities.

Servicer means any person responsible for the management or collection of the securitized assets or making allocations or distributions to holders of the ABS interests, but does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the ABS interests if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer.

Servicing assets means rights or other assets designed to assure the servicing or timely distribution of proceeds to ABS interest holders and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the issuing entity’s securitized assets. Servicing assets include amounts received by the issuing entity as proceeds of securitized assets, including proceeds of rights or other assets, whether as remittances by obligors or as other recoveries.

Single vertical security means, with respect to any securitization transaction,
an ABS interest entitling the sponsor to a specified percentage of the amounts paid on each class of ABS interests in the issuing entity (other than such single vertical security).

Sponsor means a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.

State has the same meaning as in Section 3(a)(16) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(16)).

United States or U.S. means the United States of America, including its territories and possessions, any State of the United States, and the District of Columbia.

Wholly-owned affiliate means a person (other than an issuing entity) that, directly or indirectly, wholly controls, is wholly controlled by, or is wholly under common control with, another person. For purposes of this definition, “wholly controls” means ownership of 100 percent of the equity of an entity.

Subpart B—Credit Risk Retention

§ 1234.3 Base risk retention requirement.

(a) Base risk retention requirement. Except as otherwise provided in this part, the sponsor of a securitization transaction (or majority-owned affiliate of the sponsor) shall retain an economic interest in the credit risk of the securitized assets in accordance with any one of §§1234.4 through 1234.10. Credit risk in securitized assets required to be retained and held by any person for purposes of compliance with this part, whether a sponsor, an originator, an originator-seller, or a third-party purchaser, except as otherwise provided in this part, may be acquired and held by any of such person’s majority-owned affiliates (other than an issuing entity).

(b) Multiple sponsors. If there is more than one sponsor of a securitization transaction, it shall be the responsibility of each sponsor to ensure that at least one of the sponsors of the securitization transaction (or at least one of their majority-owned or wholly-owned affiliates, as applicable) retains an economic interest in the credit risk of the securitized assets in accordance with any one of §§1234.4, 1234.5, 1234.8, 1234.9, or 1234.10.

§ 1234.4 Standard risk retention.

(a) General requirement. Except as provided in §§1234.5 through 1234.10, the sponsor of a securitization transaction must retain an eligible vertical interest or eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of this section.

(1) If the sponsor retains only an eligible vertical interest as its required risk retention, the sponsor must retain an eligible vertical interest in a percentage of not less than 5 percent.

(2) If the sponsor retains only an eligible horizontal residual interest as its required risk retention, the amount of the interest must equal at least 5 percent of the fair value of all ABS interests in the issuing entity issued as a part of the securitization transaction, determined using a fair value measurement framework under GAAP.

(3) If the sponsor retains both an eligible vertical interest and an eligible horizontal residual interest as its required risk retention, the percentage of the fair value of the eligible horizontal residual interest and the percentage of the eligible vertical interest must equal at least five.

(4) The percentage of the eligible vertical interest, eligible horizontal residual interest, or combination thereof retained by the sponsor must be determined as of the closing date of the securitization transaction.

(b) Option to hold base amount in eligible horizontal cash reserve account. In lieu of retaining all or any part of an eligible horizontal residual interest under paragraph (a) of this section, the sponsor may, at closing of the securitization transaction, cause to be established and funded, in cash, an eligible horizontal cash reserve account in the amount equal to the fair value of such eligible horizontal residual interest or part thereof, provided that the account meets all of the following conditions:

(1) The account is held by the trustee (or person performing similar functions) in the name and for the benefit of the issuing entity;
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(2) Amounts in the account are invested only in cash and cash equivalents; and

(3) Until all ABS interests in the issuing entity are paid in full, or the issuing entity is dissolved:
   (i) Amounts in the account shall be released only to:
      (A) Satisfy payments on ABS interests in the issuing entity on any payment date on which the issuing entity has insufficient funds from any source to satisfy an amount due on any ABS interest; or
      (B) Pay critical expenses of the trust unrelated to credit risk on any payment date on which the issuing entity has insufficient funds from any source to pay such expenses and:
         (1) Such expenses, in the absence of available funds in the eligible horizontal cash reserve account, would be paid prior to any payments to holders of ABS interests; and
         (2) Such payments are made to parties that are not affiliated with the sponsor; and
   (ii) Interest (or other earnings) on investments made in accordance with paragraph (b)(2) of this section may be released once received by the account.

(c) Disclosures. A sponsor relying on this section shall provide, or cause to be provided, to potential investors, under the caption “Credit Risk Retention”, a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction, a description of the material terms of the eligible horizontal residual interest to be retained by the sponsor:
   (A) Horizontal interest. With respect to any eligible horizontal residual interest held under paragraph (a) of this section, a sponsor must disclose:
      (i) A reasonable period of time prior to the sale of an asset-backed security issued in the same offering of ABS interests,
      (A) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that the sponsor expects to retain at the closing of the securitization transaction. If the specific prices, sizes, or rates of interest of each tranche of the securitization are not available, the sponsor must disclose a range of fair values (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that the sponsor expects to retain at the close of the securitization transaction based on a range of bona fide estimates or specified prices, sizes, or rates of interest of each tranche of the securitization. A sponsor disclosing a range of fair values based on a range of bona fide estimates or specified prices, sizes or rates of interest of each tranche of the securitization must also disclose the method by which it determined any range of prices, tranche sizes, or rates of interest.
      (B) A description of the material terms of the eligible horizontal residual interest to be retained by the sponsor:
      (i) A description of the valuation methodology used to calculate the fair values or range of fair values of all classes of ABS interests, including any portion of the eligible horizontal residual interest retained by the sponsor;
      (D) All key inputs and assumptions or a comprehensive description of such key inputs and assumptions that were used in measuring the estimated total fair value or range of fair values of all classes of ABS interests, including the eligible horizontal residual interest to be retained by the sponsor.
      (E) To the extent applicable to the valuation methodology used, the disclosure required in paragraph (c)(1)(i)(D) of this section shall include, but should not be limited to, quantitative information about each of the following:
         (1) Discount rates;
         (2) Loss given default (recovery);
         (3) Prepayment rates;
         (4) Default rates;
         (5) Lag time between default and recovery; and
         (6) The basis of forward interest rates used.

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(F) The disclosure required in paragraphs (c)(1)(i)(C) and (D) of this section shall include, at a minimum, descriptions of all inputs and assumptions that either could have a material impact on the fair value calculation or would be material to a prospective investor’s ability to evaluate the sponsor’s fair value calculations. To the extent the disclosure required in this paragraph (c)(1) includes a description of a curve or curves, the description shall include a description of the methodology that was used to derive each curve and a description of any aspects or features of each curve that could materially impact the fair value calculation or the ability of a prospective investor to evaluate the sponsor’s fair value calculation. To the extent a sponsor uses information about the securitized assets in its calculation of fair value, such information shall not be as of a date more than 60 days prior to the date of first use with investors; provided that for a subsequent issuance of ABS interests by the same issuing entity with the same sponsor for which the securitization transaction distributes amounts to investors on a quarterly or less frequent basis, such information shall not be as of a date more than 135 days prior to the date of first use with investors; provided further, that the balance or value (in accordance with the transaction documents) of the securitized assets may be increased or decreased to reflect anticipated additions or removals of assets the sponsor makes or expects to make between the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security and the closing date of the securitization.

(G) A summary description of the reference data set or other historical information used to develop the key inputs and assumptions referenced in paragraph (c)(1)(i)(D) of this section, including loss given default and default rates;

(ii) A reasonable time after the closing of the securitization transaction:

(A) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest the sponsor retained at the closing of the securitization transaction, based on actual sale prices and finalized tranche sizes;

(B) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest that the sponsor is required to retain under this section; and

(C) To the extent the valuation methodology or any of the key inputs and assumptions that were used in calculating the fair value or range of fair values disclosed prior to sale and required under paragraph (c)(1)(i) of this section materially differs from the methodology or key inputs and assumptions used to calculate the fair value at the time of closing, descriptions of those material differences.

(iii) If the sponsor retains risk through the funding of an eligible horizontal cash reserve account:

(A) The amount to be placed (or that is placed) by the sponsor in the eligible horizontal cash reserve account at closing, and the fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that the sponsor is required to fund through the eligible horizontal cash reserve account in order for such account, together with other retained interests, to satisfy the sponsor’s risk retention requirement;

(B) A description of the material terms of the eligible horizontal cash reserve account; and

(C) The disclosures required in paragraphs (c)(1)(i) and (ii) of this section.

(2) Vertical interest. With respect to any eligible vertical interest retained under paragraph (a) of this section, the sponsor must disclose:

(i) A reasonable period of time prior to the sale of an asset-backed security
§ 1234.5 Revolving pool securitizations.

(a) Definitions. For purposes of this section, the following definitions apply:

Revolving pool securitization means an issuing entity that is established to issue on multiple issuance dates more than one series, class, subclass, or tranche of asset-backed securities that are collateralized by a common pool of securitized assets that will change in composition over time, and that does not monetize excess interest and fees from its securitized assets.

Seller’s interest means an ABS interest or ABS interests:

(i) Collateralized by the securitized assets and servicing assets owned or held by the issuing entity, other than the following that are not considered a component of seller’s interest:

(i) Servicing assets that have been allocated as collateral only for a specific series in connection with administering the revolving pool securitization, such as a principal accumulation or interest reserve account; and

(ii) Assets that are not eligible under the terms of the securitization transaction to be included when determining whether the revolving pool securitization holds aggregate securitized assets in specified proportions to aggregate outstanding investor ABS interests issued; and

(ii) That is pari passu with each series of investor ABS interests issued, or partially or fully subordinated to one or more series in identical or varying amounts, with respect to the allocation of all distributions and losses with respect to the securitized assets prior to early amortization of the revolving securitization (as specified in the securitization transaction documents); and

(iii) That adjusts for fluctuations in the outstanding principal balance of the securitized assets in the pool.

(b) General requirement. A sponsor satisfies the risk retention requirements of §1234.3 with respect to a securitization transaction for which the issuing entity is a revolving pool securitization if the sponsor maintains a seller’s interest of not less than 5 percent of the aggregate unpaid principal balance of all outstanding investor ABS interests in the issuing entity.

(c) Measuring the seller’s interest. In measuring the seller’s interest for purposes of meeting the requirements of paragraph (b) of this section:

(1) The unpaid principal balance of the securitized assets for the numerator of the 5 percent ratio shall not include assets of the types excluded from the definition of seller’s interest in paragraph (a) of this section:

(ii) The terms of the securitization transaction documents prevent funds in the principal accumulation account from being applied for any purpose other than the repayment of the unpaid principal of outstanding investor ABS interests, if:

(i) The terms of the securitization transaction documents prevent funds in the principal accumulation account from being applied for any purpose other than the repayment of the unpaid principal of outstanding investor ABS interests, if:

(ii) Funds in that account are invested only in the types of assets in
which funds held in an eligible horizontal cash reserve account pursuant to §1234.4 are permitted to be invested;

(3) If the terms of the securitization transaction documents set minimum required seller’s interest as a proportion of the unpaid principal balance of outstanding investor ABS interests for one or more series issued, rather than as a proportion of the aggregate outstanding investor ABS interests in all outstanding series combined, the percentage of the seller’s interest for each such series must, when combined with the percentage of any minimum seller’s interest set by reference to the aggregate outstanding investor ABS interests, equal at least 5 percent;

(4) The 5 percent test must be determined and satisfied at the closing of each issuance of ABS interests to investors by the issuing entity, and

(i) At least monthly at a seller’s interest measurement date specified under the securitization transaction documents, until no ABS interest in the issuing entity is held by any person not a wholly-owned affiliate of the sponsor; or

(ii) If the revolving pool securitization fails to meet the 5 percent test as of any date described in paragraph (c)(4)(i) of this section, and the securitization transaction documents specify a cure period, the 5 percent test must be determined and satisfied within the earlier of the cure period, or one month after the date described in paragraph (c)(4)(i).

(d) Measuring outstanding investor ABS interests. In measuring the amount of outstanding investor ABS interests for purposes of this section, ABS interests held for the life of such ABS interests by the sponsor or its wholly-owned affiliates may be excluded.

(e) Holding and retention of the seller’s interest; legacy trusts. (1) Notwithstanding §1234.12(a), the seller’s interest, and any offsetting horizontal retention interest retained pursuant to paragraph (g) of this section, must be retained by the sponsor or by one or more wholly-owned affiliates of the sponsor, including one or more depositors of the revolving pool securitization.

(2) If one revolving pool securitization issues collateral certifi-
cates representing a beneficial interest in all or a portion of the securitized assets held by that securitization to another revolving pool securitization, which in turn issues ABS interests for which the collateral certificates are all or a portion of the securitized assets, a sponsor may satisfy the requirements of paragraphs (b) and (c) of this section by retaining the seller’s interest for the assets represented by the collateral certificates through either of the revolving pool securitizations, so long as both revolving pool securitizations are retained at the direction of the same sponsor or its wholly-owned affiliates.

(3) If the sponsor retains the seller’s interest associated with the collateral certificates at the level of the revolving pool securitization that issues those collateral certificates, the proportion of the seller’s interest required by paragraph (b) of this section retained at that level must equal the proportion that the principal balance of the securitized assets represented by the collateral certificates bears to the principal balance of the securitized assets in the revolving pool securitization that issues the ABS interests, as of each measurement date required by paragraph (c) of this section.

(f) Offset for pool-level excess funding account. The 5 percent seller’s interest required on each measurement date by paragraph (c) of this section may be reduced on a dollar-for-dollar basis by the balance, as of such date, of an excess funding account in the form of a segregated account that:

(1) Is funded in the event of a failure to meet the minimum seller’s interest requirements or other requirement to maintain a minimum balance of securitized assets under the securitization transaction documents by distributions otherwise payable to the holder of the seller’s interest;

(2) Is invested only in the types of assets in which funds held in a horizontal cash reserve account pursuant to §1234.4 are permitted to be invested; and

(3) In the event of an early amortization, makes payments of amounts held in the account to holders of investor ABS interests in the same manner as payments to holders of investor ABS interests.
(g) Combined seller's interests and horizontal interest retention. The 5 percent seller's interest required on each measurement date by paragraph (c) of this section may be reduced to a percentage lower than 5 percent to the extent that, for all series of investor ABS interests issued after the applicable effective date of this §1234.5, the sponsor, or notwithstanding §1234.12(a) a wholly-owned affiliate of the sponsor, retains, at a minimum, a corresponding percentage of the fair value of ABS interests issued in each series, in the form of one or more of the horizontal residual interests meeting the requirements of paragraphs (h) or (i).

(h) Residual ABS interests in excess interest and fees. The sponsor may take the offset described in paragraph (g) of this section for a residual ABS interest in excess interest and fees, whether certificated or uncertificated, in a single or multiple classes, subclasses, or tranches, that meets, individually or in the aggregate, the requirements of this paragraph (h):

(1) Each series of the revolving pool securitization distinguishes between the series' share of the interest and fee cash flows and the series' share of the principal repayment cash flows from the securitized assets collateralizing the revolving pool securitization, which may according to the terms of the securitization transaction documents, include not only the series' ratable share of such cash flows but also excess cash flows available from other series;

(2) The residual ABS interest's claim to any part of the series' share of the interest and fee cash flows for any interest payment period is subordinated to all accrued and payable interest due on the payment date to more senior ABS interests in the series for that period, and further reduced by the series' share of losses, including defaults on principal of the securitized assets collateralizing the revolving pool securitization (whether incurred in that period or carried over from prior periods) to the extent that such payments would have been included in amounts payable to more senior interests in the series; and

(3) The revolving pool securitization continues to revolve, with one or more series, classes, subclasses, or tranches of asset-backed securities that are collateralized by a common pool of assets that change in composition over time; and

(4) For purposes of taking the offset described in paragraph (g) of this section, the sponsor determines the fair value of the residual ABS interest in excess interest and fees, and the fair value of the series of outstanding investor ABS interests to which it is subordinated and supports using the fair value measurement framework under GAAP, as of:

(i) The closing of the securitization transaction issuing the supported ABS interests; and

(ii) The seller's interest measurement dates described in paragraph (c)(4) of this section, except that for these periodic determinations the sponsor must update the fair value of the residual ABS interest in excess interest and fees for the numerator of the percentage ratio, but may at the sponsor's option continue to use the fair values determined in (h)(4)(i) for the outstanding investor ABS interests in the denominator.

(i) Offsetting eligible horizontal residual interest. The sponsor may take the offset described in paragraph (g) of this section for ABS interests that would meet the definition of eligible horizontal residual interests in §1234.2 but for the sponsor's simultaneous holding of subordinated seller's interests, residual ABS interests in excess interests and fees, or a combination of the two, if:

(1) The sponsor complies with all requirements of paragraphs (b) through (e) of this section for its holdings of subordinated seller's interest, and paragraph (h) for its holdings of residual ABS interests in excess interests and fees, as applicable;

(2) For purposes of taking the offset described in paragraph (g) of this section, the sponsor determines the fair value of the eligible horizontal residual interest as a percentage of the fair value of the outstanding investor ABS interests in the series supported by the eligible horizontal residual interest,
determined using the fair value measurement framework under GAAP:

(i) As of the closing of the securitization transaction issuing the supported ABS interests; and

(ii) Without including in the numerator of the percentage ratio any fair value based on:

(A) The subordinated seller’s interest or residual ABS interest in excess interest and fees;

(B) the interest payable to the sponsor on the eligible horizontal residual interest, if the sponsor is including the value of residual ABS interest in excess interest and fees pursuant to paragraph (h) of this section in taking the offset in paragraph (g) of this section; and,

(C) the principal payable to the sponsor on the eligible horizontal residual interest, if the sponsor is including the value of the seller’s interest pursuant to paragraphs (b) through (f) of this section and distributions on that seller’s interest are available to reduce charge-offs that would otherwise be allocated to reduce principal payable to the offset eligible horizontal residual interest.

(j) Specified dates. A sponsor using data about the revolving pool securitization’s collateral, or ABS interests previously issued, to determine the closing-date percentage of a seller’s interest, residual ABS interest in excess interest and fees, or eligible horizontal residual interest pursuant to paragraphs (b) through (f) of this section and distributions on that seller’s interest are available to reduce charge-offs that would otherwise be allocated to reduce principal payable to the offset eligible horizontal residual interest:

(ii) A reasonable period of time prior to the sale of an asset-backed security, a description of the material terms of the seller’s interest, and the percentage of the seller’s interest that the sponsor expects to retain at the closing of the securitization transaction, measured in accordance with the requirements of this §1234.5, as a percentage of the aggregate unpaid principal balance of all outstanding investor ABS interests issued, or as a percentage of the aggregate unpaid principal balance of outstanding investor ABS interests for one or more series issued, as required by the terms of the securitization transaction;

(iii) A description of the material terms of any horizontal residual interests offsetting the seller’s interest in accordance with paragraphs (g), (h), and (i) of this section; and

(iv) Disclosure of the fair value of those horizontal residual interests retained by the sponsor for the series being offered to investors and described in the disclosures, as a percentage of the fair value of the outstanding investor ABS interests issued, described in the same manner and within the same timeframes required for disclosure of the fair values of eligible horizontal residual interests specified in §1234.4(c).

(k) Disclosure and record maintenance.

(1) Disclosure. A sponsor relying on this section shall provide, or cause to be provided, to potential investors, under the caption “Credit Risk Retention” the following disclosure in written form and within the time frames set forth in this paragraph (k):

(i) A reasonable period of time prior to the sale of an asset-backed security, a description of the material terms of the seller’s interest, and the percentage of the seller’s interest that the sponsor expects to retain at the closing of the securitization transaction, measured in accordance with the requirements of this §1234.5, as a percentage of the aggregate unpaid principal balance of all outstanding investor ABS interests issued, or as a percentage of the aggregate unpaid principal balance of outstanding investor ABS interests for one or more series issued, as required by the terms of the securitization transaction;

(ii) A reasonable time after the closing of the securitization transaction, the amount of seller’s interest the sponsor retained at closing, if that amount is materially different from the amount disclosed under paragraph (k)(1)(i) of this section; and

(iii) A description of the material terms of any horizontal residual interests offsetting the seller’s interest in accordance with paragraphs (g), (h), and (i) of this section; and

(iv) Disclosure of the fair value of those horizontal residual interests retained by the sponsor for the series being offered to investors and described in the disclosures, as a percentage of the fair value of the outstanding investor ABS interests issued, described in the same manner and within the same timeframes required for disclosure of the fair values of eligible horizontal residual interests specified in §1234.4(c).
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(3) Record maintenance. A sponsor must retain the disclosures required in paragraph (k)(1) of this section in its records and must provide the disclosure upon request to the Commission and its appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding.

(1) Early amortization of all outstanding series. A sponsor that organizes a revolving pool securitization that relies on this §1234.5 to satisfy the risk retention requirements of §1234.3, does not violate the requirements of this part if its seller’s interest falls below the level required by §1234.5 after the revolving pool securitization commences early amortization, pursuant to the terms of the securitization transaction documents, of all series of outstanding investor ABS interests, if:

(1) The sponsor was in full compliance with the requirements of this section on all measurement dates specified in paragraph (c) of this section prior to the commencement of early amortization;

(2) The terms of the seller’s interest continue to make it pari passu with or subordinate in identical or varying amounts to each series of outstanding investor ABS interests issued with respect to the allocation of all distributions and losses with respect to the securitized assets;

(3) The terms of any horizontal interest relied upon by the sponsor pursuant to paragraph (g) to offset the minimum seller’s interest amount continue to require the interests to absorb losses in accordance with the terms of paragraph (h) or (i) of this section, as applicable; and

(4) The revolving pool securitization issues no additional ABS interests after early amortization is initiated to any person not a wholly-owned affiliate of the sponsor, either at the time of issuance or during the amortization period.

§ 1234.6 Eligible ABCP conduits.

(a) Definitions. For purposes of this section, the following additional definitions apply:

100 percent liquidity coverage means an amount equal to the outstanding balance of all ABCP issued by the conduit plus any accrued and unpaid interest without regard to the performance of the ABS interests held by the ABCP conduit and without regard to any credit enhancement.

ABCP means asset-backed commercial paper that has a maturity at the time of issuance not exceeding 397 days, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

ABCP conduit means an issuing entity with respect to ABCP.

Eligible ABCP conduit means an ABCP conduit, provided that:

(1) The ABCP conduit is bankruptcy remote or otherwise isolated for insolvency purposes from the sponsor of the ABCP conduit and from any intermediate SPV;

(2) The ABS interests acquired by the ABCP conduit are:

(i) ABS interests collateralized solely by assets originated by an originator-seller and by servicing assets;

(ii) Special units of beneficial interest (or similar ABS interests) in a trust or special purpose vehicle that retains legal title to leased property underlying leases originated by an originator-seller that were transferred to an intermediate SPV in connection with a securitization collateralized solely by such leases and by servicing assets;

(iii) ABS interests in a revolving pool securitization collateralized solely by assets acquired by an originator-seller in a business combination that qualifies for business combination accounting under GAAP, and, if collateralized in part, the remainder of such assets are assets described in paragraph (2)(i), (ii), or (iii) of this definition; and

(iv) ABS interests described in paragraph (2)(i), (ii), or (iii) of this definition that are collateralized, in whole or in part, by assets acquired by an originator-seller in a business combination that qualifies for business combination accounting under GAAP, and, if collateralized in part, the remainder of such assets are assets described in paragraph (2)(i), (ii), or (iii) of this definition; and

(v) Acquired by the ABCP conduit in an initial issuance by or on behalf of an intermediate SPV:

(A) Directly from the intermediate SPV;

(B) From an underwriter of the ABS interests issued by the intermediate SPV, or
(C) From another person who acquired the ABS interests directly from the intermediate SPV;

(3) The ABCP conduit is collateralized solely by ABS interests acquired from intermediate SPVs as described in paragraph (2) of this definition and servicing assets; and

(4) A regulated liquidity provider has entered into a legally binding commitment to provide 100 percent liquidity coverage (in the form of a lending facility, an asset purchase agreement, a repurchase agreement, or other similar arrangement) to all the ABCP issued by the ABCP conduit by lending to, purchasing ABCP issued by, or purchasing assets from, the ABCP conduit in the event that funds are required to repay maturing ABCP issued by the ABCP conduit. With respect to the 100 percent liquidity coverage, in the event that the ABCP conduit is unable for any reason to repay maturing ABCP issued by the issuing entity, the liquidity provider shall be obligated to pay an amount equal to any shortfall, and the total amount that may be due pursuant to the 100 percent liquidity coverage shall be equal to 100 percent of the amount of the ABCP outstanding at any time plus accrued and unpaid interest (amounts due pursuant to the required liquidity coverage may not be subject to credit performance of the ABS interests held by the ABCP conduit or reduced by the amount of credit support provided to the ABCP conduit and liquidity support that only funds performing loans or receivables or performing ABS interests does not meet the requirements of this section).

Intermediate SPV means a special purpose vehicle that:

1. (i) Is a direct or indirect wholly-owned affiliate of the originator-seller; or
2. (ii) Has nominal equity owned by a trust or corporate service provider that specializes in providing independent ownership of special purpose vehicles, and such trust or corporate service provider is not affiliated with any other transaction parties;

2. (i) Is bankruptcy remote or otherwise isolated for insolvency purposes from the eligible ABCP conduit and from each originator-seller and each majority-owned affiliate in each case

that, directly or indirectly, sells or transfers assets to such intermediate SPV;

3. Acquires assets from the originator-seller that are originated by the originator-seller or acquired by the originator-seller in the acquisition of a business that qualifies for business combination accounting under GAAP or acquires ABS interests issued by another intermediate SPV of the originator-seller that are collateralized solely by such assets; and

4. Issues ABS interests collateralized solely by such assets, as applicable.

Originator-seller means an entity that originates assets and sells or transfers those assets, directly or through a majority-owned affiliate, to an intermediate SPV, and includes (except for the purposes of identifying the sponsorship and affiliation of an intermediate SPV pursuant to this § 1234.6) any affiliate of the originator-seller that, directly or indirectly, majority controls, is majority controlled by or is under common majority control with, the originator-seller. For purposes of this definition, majority control means ownership of more than 50 percent of the equity of an entity, or ownership of any other controlling financial interest in the entity, as determined under GAAP.

Regulated liquidity provider means:

1. (1) A depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));
2. (2) A bank holding company (as defined in 12 U.S.C. 1841), or a subsidiary thereof;
3. (3) A savings and loan holding company (as defined in 12 U.S.C. 1843(k), or a subsidiary thereof;
4. (4) A foreign bank whose home country supervisor (as defined in §211.21 of the Federal Reserve Board’s Regulation K (12 CFR 211.21)) has adopted capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision, as amended, and that is subject to such standards, or a subsidiary thereof.

Intermediate SPV means a special purpose vehicle that:

1. (i) Is a direct or indirect wholly-owned affiliate of the originator-seller; or
2. (ii) Has nominal equity owned by a trust or corporate service provider that specializes in providing independent ownership of special purpose vehicles, and such trust or corporate service provider is not affiliated with any other transaction parties;
(b) In general. An ABCP conduit sponsor satisfies the risk retention requirement of §1234.3 with respect to the issuance of ABCP by an eligible ABCP conduit in a securitization transaction if, for each ABS interest the ABCP conduit acquires from an intermediate SPV:

(1) An originator-seller of the intermediate SPV retains an economic interest in the credit risk of the assets collateralizing the ABS interest acquired by the eligible ABCP conduit in the amount and manner required under §1234.4 or §1234.5; and

(2) The ABCP conduit sponsor:
   (i) Approves each originator-seller permitted to sell or transfer assets, directly or indirectly, to an intermediate SPV from which an eligible ABCP conduit acquires ABS interests;
   (ii) Approves each intermediate SPV from which an eligible ABCP conduit is permitted to acquire ABS interests;
   (iii) Establishes criteria governing the ABS interests, and the securitized assets underlying the ABS interests, acquired by the ABCP conduit;
   (iv) Administers the ABCP conduit by monitoring the ABS interests acquired by the ABCP conduit and the assets supporting those ABS interests, arranging for debt placement, compiling monthly reports, and ensuring compliance with the ABCP conduit documents and with the ABCP conduit’s credit and investment policy; and
   (v) Maintains and adheres to policies and procedures for ensuring that the requirements in this paragraph (b) of this section have been met.

(c) Originator-seller compliance with risk retention. The use of the risk retention option provided in this section by an ABCP conduit sponsor does not relieve the originator-seller that sponsors ABS interests acquired by an eligible ABCP conduit from such originator-seller’s obligation to comply with its own risk retention obligations under this part.

(d) Disclosures—(1) Periodic disclosures to investors. An ABCP conduit sponsor relying upon this section shall provide, or cause to be provided, to each purchaser of ABCP, before or contemporaneously with the first sale of ABCP to such purchaser and at least monthly thereafter, to each holder of commercial paper issued by the ABCP conduit, in writing, each of the following items of information, which shall be as of a date not more than 60 days prior to date of first use with investors:
   (i) The name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund.
   (ii) With respect to each ABS interest held by the ABCP conduit:
      (A) The asset class or brief description of the underlying securitized assets;
      (B) The standard industrial category code (SIC Code) for the originator-seller that will retain (or has retained) pursuant to this section an interest in the securitization transaction; and
      (C) A description of the percentage amount of risk retention pursuant to the rule by the originator-seller, and whether it is in the form of an eligible horizontal residual interest, vertical interest, or revolving pool securitization seller’s interest, as applicable.

   (2) Disclosures to regulators regarding originator-sellers. An ABCP conduit sponsor relying upon this section shall provide, or cause to be provided, upon request, to the Commission and its appropriate Federal banking agency, if any, in writing, all of the information required to be provided to investors in paragraph (d)(1) of this section, and the name and form of organization of each originator-seller that will retain (or has retained) pursuant to this section an interest in the securitization transaction.

(e) Sale or transfer of ABS interests between eligible ABCP conduits. At any time, an eligible ABCP conduit that acquired an ABS interest in accordance with the requirements set forth in this section may transfer, and another eligible ABCP conduit may acquire, such ABS interest, if the following conditions are satisfied:

   (1) The sponsors of both eligible ABCP conduits are in compliance with this section; and
(2) The same regulated liquidity provider has entered into one or more legally binding commitments to provide 100 percent liquidity coverage to all the ABCP issued by both eligible ABCP conduits.

(f) Duty to comply. (1) The ABCP conduit sponsor shall be responsible for compliance with this section.

(2) An ABCP conduit sponsor relying on this section:

(i) Shall maintain and adhere to policies and procedures that are reasonably designed to monitor compliance by each originator-seller which is satisfying a risk retention obligation in respect of ABS interests acquired by an eligible ABCP conduit with the requirements of paragraph (b)(1) of this section; and

(ii) In the event that the ABCP conduit sponsor determines that an originator-seller no longer complies with the requirements of paragraph (b)(1) of this section, shall:

(A) Promptly notify the holders of the ABCP, and upon request, the Commission and its appropriate Federal banking agency, if any, in writing of:

(1) The name and form of organization of any originator-seller that fails to retain risk in accordance with paragraph (b)(1) of this section and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit;

(B) Take other appropriate steps pursuant to the requirements of paragraphs (b)(2)(iv) and (v) of this section which may include, as appropriate, curing any breach of the requirements in this section, or removing from the eligible ABCP conduit any ABS interest that does not comply with the requirements in this section.

§ 1234.7 Commercial mortgage-backed securities.

(a) Definitions. For purposes of this section, the following definition shall apply:

Special servicer means, with respect to any securitization of commercial real estate loans, any servicer that, upon the occurrence of one or more specified conditions in the servicing agreement, has the right to service one or more assets in the transaction.

(b) Third-party purchaser. A sponsor may satisfy some or all of its risk retention requirements under §1234.3 with respect to a securitization transaction if a third party (or any majority-owned affiliate thereof) purchases and holds for its own account an eligible horizontal residual interest in the issuing entity in the same form, amount, and manner as would be held by the sponsor under §1234.4 and all of the following conditions are met:

(1) Number of third-party purchasers. At any time, there are no more than two third-party purchasers of an eligible horizontal residual interest. If there are two third-party purchasers, each third-party purchaser’s interest must be pari passu with the other third-party purchaser’s interest.

(2) Composition of collateral. The securitization transaction is collateralized solely by commercial real estate loans and servicing assets.

(i) Each third-party purchaser pays for the eligible horizontal residual interest in cash at the closing of the securitization transaction.

(ii) No third-party purchaser obtains financing, directly or indirectly, from any other person that is a party to, or an affiliate of a party to, the securitization transaction (including, but not limited to, the sponsor, depositary, or servicer other than a special servicer affiliated with the third-party purchaser), other than a person that is a party to the transaction solely by reason of being an investor.

(3) Source of funds. (i) Each third-party purchaser pays for the eligible horizontal residual interest in cash at the closing of the securitization transaction.

(4) Third-party review. Each third-party purchaser conducts an independent review of the credit risk of each securitized asset prior to the sale of the asset-backed securities in the
securitization transaction that includes, at a minimum, a review of the underwriting standards, collateral, and expected cash flows of each commercial real estate loan that is collateral for the asset-backed securities.

(5) Affiliation and control rights. (i) Except as provided in paragraph (b)(5)(ii) of this section, no third-party purchaser is affiliated with any party to the securitization transaction (including, but not limited to, the sponsor, depositor, or servicer) other than investors in the securitization transaction.

(ii) Notwithstanding paragraph (b)(5)(i) of this section, a third-party purchaser may be affiliated with:

(A) The special servicer for the securitization transaction; or

(B) One or more originators of the securitized assets, as long as the assets originated by the affiliated originator or originators collectively comprise less than 10 percent of the unpaid principal balance of the securitized assets included in the securitization transaction at the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction.

(6) Operating Advisor. The underlying securitization transaction documents shall provide for the following:

(i) The appointment of an operating advisor (the Operating Advisor) that:

(A) Is not affiliated with other parties to the securitization transaction;

(B) Does not directly or indirectly have any financial interest in the securitization transaction other than in fees from its role as Operating Advisor; and

(C) Is required to act in the best interest of, and for the benefit of, investors as a collective whole;

(ii) Standards with respect to the Operating Advisor’s experience, expertise and financial strength to fulfill its duties and responsibilities under the applicable transaction documents over the life of the securitization transaction;

(iii) The terms of the Operating Advisor’s compensation with respect to the securitization transaction;

(iv) When the eligible horizontal residual interest has been reduced by principal payments, realized losses, and appraisal reduction amounts (which reduction amounts are determined in accordance with the applicable transaction documents) to a principal balance of 25 percent or less of its initial principal balance, the special servicer for the securitized assets must consult with the Operating Advisor in connection with, and prior to, any material decision in connection with its servicing of the securitized assets, including, without limitation:

(A) Any material modification of, or waiver with respect to, any provision of a loan agreement (including a mortgage, deed of trust, or other security agreement);

(B) Foreclosure upon or comparable conversion of the ownership of a property; or

(C) Any acquisition of a property.

(v) The Operating Advisor shall have adequate and timely access to information and reports necessary to fulfill its duties under the transaction documents, including all reports made available to holders of ABS interests and third-party purchasers, and shall be responsible for:

(A) Reviewing the actions of the special servicer;

(B) Reviewing all reports provided by the special servicer to the issuing entity or any holder of ABS interests;

(C) Reviewing for accuracy and consistency with the transaction documents calculations made by the special servicer; and

(D) Issuing a report to investors (including any third-party purchasers) and the issuing entity on a periodic basis concerning:

(I) Whether the Operating Advisor believes, in its sole discretion exercised in good faith, that the special servicer is operating in compliance with any standard required of the special servicer in the applicable transaction documents; and

(2) Which, if any, standards the Operating Advisor believes, in its sole discretion exercised in good faith, the special servicer has failed to comply.

(vi)(A) The Operating Advisor shall have the authority to recommend that the special servicer be replaced by a successor special servicer if the Operating Advisor determines, in its sole discretion exercised in good faith, that:
The special servicer has failed to comply with a standard required of the special servicer in the applicable transaction documents; and

(2) Such replacement would be in the best interest of the investors as a collective whole; and

(B) If a recommendation described in paragraph (b)(6)(vi)(A) of this section is made, the special servicer shall be replaced upon the affirmative vote of a majority of the outstanding principal balance of all ABS interests voting on the matter, with a minimum of a quorum of ABS interests voting on the matter. For purposes of such vote, the applicable transaction documents shall specify the quorum and may not specify a quorum of more than the holders of 20 percent of the outstanding principal balance of all ABS interests in the issuing entity, with such quorum including at least three ABS interest holders that are not affiliated with each other.

(7) Disclosures. The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption “Credit Risk Retention”:

(i) The name and form of organization of each initial third-party purchaser that acquired an eligible horizontal residual interest at the closing of a securitization transaction;

(ii) A description of each initial third-party purchaser’s experience in investing in commercial mortgage-backed securities;

(iii) Any other information regarding each initial third-party purchaser or each initial third-party purchaser’s retention of the eligible horizontal residual interest that is material to investors in light of the circumstances of the particular securitization transaction;

(iv) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that will be retained (or was retained) by each initial third-party purchaser, as well as the amount of the purchase price paid by each initial third-party purchaser for such interest;

(v) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest retained in the securitization transaction that the sponsor would have retained pursuant to §1234.4 if the sponsor had relied on retaining an eligible horizontal residual interest in that section to meet the requirements of §1234.3 with respect to the transaction;

(vi) A description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to §1234.4;

(vii) The material terms of the applicable transaction documents with respect to the Operating Advisor, including without limitation:

(A) The name and form of organization of the Operating Advisor;

(B) A description of any material conflict of interest or material potential conflict of interest between the Operating Advisor and any other party to the transaction;

(C) The standards required by paragraph (b)(6)(ii) of this section and a description of how the Operating Advisor satisfies each of the standards; and

(D) The terms of the Operating Advisor’s compensation under paragraph (b)(6)(iii) of this section; and

(viii) The representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and what factors were used to make the determination that such securitized assets should be included in the pool notwithstanding that the securitized assets did not comply with such representations and warranties,
such as compensating factors or a determination that the exceptions were not material.

(b) Hedging, transfer and pledging—(i) General rule. Except as set forth in paragraph (b)(8)(ii) of this section, each third-party purchaser and its affiliates must comply with the hedging and other restrictions in §1234.12 as if it were the retaining sponsor with respect to the securitization transaction and had acquired the eligible horizontal residual interest pursuant to §1234.4; provided that, the hedging and other restrictions in §1234.12 shall not apply on or after the date that each CRE loan (as defined in §1234.14) that serves as collateral for outstanding ABS interests has been defeased. For purposes of this section, a loan is deemed to be defeased if:

(A) cash or cash equivalents of the types permitted for an eligible horizontal cash reserve account pursuant to §1234.4 whose maturity corresponds to the remaining debt service obligations, have been pledged to the issuing entity as collateral for the loan and are in such amounts and payable at such times as necessary to timely generate cash sufficient to make all remaining debt service payments due on such loan; and

(B) the issuing entity has an obligation to release its lien on the loan.

(ii) Exceptions—(A) Transfer by initial third-party purchaser or sponsor. An initial third-party purchaser that acquired an eligible horizontal residual interest at the closing of a securitization transaction in accordance with this section, or a sponsor that acquired an eligible horizontal residual interest at the closing of a securitization transaction in accordance with this section, may, on or after the date that is five years after the date of the closing of the securitization transaction, transfer that interest to a subsequent third-party purchaser that complies with paragraph (b)(8)(ii)(C) of this section. The initial third-party purchaser shall provide the sponsor with complete identifying information for the acquiring third-party purchaser.

(B) Transfer by subsequent third-party purchaser. At any time, a subsequent third-party purchaser that acquired an eligible horizontal residual interest pursuant to this section may transfer its interest to a different third-party purchaser that complies with paragraph (b)(8)(ii)(C) of this section. The transferring third-party purchaser shall provide the sponsor with complete identifying information for the acquiring third-party purchaser.

(C) Requirements applicable to subsequent third-party purchasers. A subsequent third-party purchaser is subject to all of the requirements of paragraphs (b)(1), (b)(3) through (5), and (b)(8) of this section applicable to third-party purchasers, provided that obligations under paragraphs (b)(1), (b)(3) through (5), and (b)(8) of this section that apply to initial third-party purchasers at or before the time of the transfer of the eligible horizontal residual interest to the sponsor third-party purchaser.

(c) Duty to comply. (1) The retaining sponsor shall be responsible for compliance with this section by itself and for compliance by each initial or subsequent third-party purchaser that acquired an eligible horizontal residual interest in the securitization transaction.

(2) A sponsor relying on this section:

(i) Shall maintain and adhere to policies and procedures to monitor each third-party purchaser’s compliance with the requirements of paragraphs (b)(1), (b)(3) through (5), and (b)(8) of this section; and

(ii) In the event that the sponsor determines that a third-party purchaser no longer complies with one or more of the requirements of paragraphs (b)(1), (b)(3) through (5), or (b)(8) of this section, shall promptly notify, or cause to be notified, the holders of the ABS interests issued in the securitization transaction of such noncompliance by such third-party purchaser.

§ 1234.8 Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS.

(a) In general. A sponsor satisfies its risk retention requirement under this part if the sponsor fully guarantees the
timely payment of principal and interest on all ABS interests issued by the issuing entity in the securitization transaction and is:

(1) The Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617) with capital support from the United States; or

(2) Any limited-life regulated entity succeeding to the charter of either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)), provided that the entity is operating with capital support from the United States.

(b) Certain provisions not applicable. The provisions of §1234.12(b), (c), and (d) shall not apply to a sponsor described in paragraph (a)(1) or (2) of this section, its affiliates, or the issuing entity with respect to a securitization transaction for which the sponsor has retained credit risk in accordance with the requirements of this section.

(c) Disclosure. A sponsor relying on this section shall provide to investors, in written form under the caption “Credit Risk Retention” and, upon request, to the Federal Housing Finance Agency and the Commission, a description of the manner in which it has met the credit risk retention requirements of this part.

§ 1234.9 Open market CLOs.

(a) Definitions. For purposes of this section, the following definitions shall apply:

CLO means a special purpose entity that:

(i) Issues debt and equity interests, and

(ii) Whose assets consist primarily of loans that are securitized assets and servicing assets.

CLO-eligible loan tranche means a term loan of a syndicated facility that meets the criteria set forth in paragraph (c) of this section.

CLO manager means an entity that manages a CLO, which entity is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (15 U.S.C. 80b-1 et seq.), or is an affiliate of such a registered investment adviser and itself is managed by such registered investment adviser.

Commercial borrower means an obligor under a corporate credit obligation (including a loan).

Initial loan syndication transaction means a transaction in which a loan is syndicated to a group of lenders.

Lead arranger means, with respect to a CLO-eligible loan tranche, an institution that:

(i) Is active in the origination, structuring and syndication of commercial loan transactions (as defined in §1234.14) and has played a primary role in the structuring, underwriting and distribution on the primary market of the CLO-eligible loan tranche;

(ii) Has taken an allocation of the funded portion of the syndicated credit facility under the terms of the transaction that includes the CLO-eligible loan tranche of at least 20 percent of the aggregate principal balance at origination, and no other member (or members affiliated with each other) of the syndication group that funded at origination has taken a greater allocation; and

(iii) Is identified in the applicable agreement governing the CLO-eligible loan tranche; represents therein to the holders of the CLO-eligible loan tranche and to any holders of participation interests in such CLO-eligible loan tranche that such lead arranger satisfies the requirements of paragraph (i) of this definition and, at the time of initial funding of the CLO-eligible tranche, will satisfy the requirements of paragraph (ii) of this definition; further represents therein (solely for the purpose of assisting such holders to determine the eligibility of such CLO-eligible loan tranche to be held by an open market CLO) that in the reasonable judgment of such lead arranger, the terms of such CLO-eligible loan tranche are consistent with the requirements of paragraphs (c)(2) and (3) of this section; and covenants therein to such holders that such lead arranger...
will fulfill the requirements of paragraph (c)(1) of this section.

Open market CLO means a CLO:
(i) Whose assets consist of senior, secured syndicated loans acquired by such CLO directly from the sellers thereof in open market transactions and of servicing assets,
(ii) That is managed by a CLO manager, and
(iii) That holds less than 50 percent of its assets, by aggregate outstanding principal amount, in loans syndicated by lead arrangers that are affiliates of the CLO or the CLO manager or originated by originators that are affiliates of the CLO or the CLO manager.

Open market transaction means:
(i) Either an initial loan syndication transaction or a secondary market transaction in which a seller offers senior, secured syndicated loans to prospective purchasers in the loan market on market terms on an arm’s length basis, which prospective purchasers include, but are not limited to, entities that are not affiliated with the seller, or
(ii) A reverse inquiry from a prospective purchaser of a senior, secured syndicated loan through a dealer in the loan market to purchase a senior, secured syndicated loan to be sourced by the dealer in the loan market.

Secondary market transaction means a purchase of a senior, secured syndicated loan not in connection with an initial loan syndication transaction but in the secondary market.

Senior, secured syndicated loan means a loan made to a commercial borrower that:
(i) Is not subordinate in right of payment to any other obligation for borrowed money of the commercial borrower,
(ii) Is secured by a valid first priority security interest or lien in or on specified collateral securing the commercial borrower's obligations under the loan, and
(iii) The value of the collateral subject to such first priority security interest or lien, together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow), is adequate

(b) In general. A sponsor satisfies the risk retention requirements of §1234.3 with respect to an open market CLO transaction if:
(1) The open market CLO does not acquire or hold any assets other than CLO-eligible loan tranches that meet the requirements of paragraph (c) of this section and servicing assets;
(2) The governing documents of such open market CLO require that, at all times, the assets of the open market CLO consist of senior, secured syndicated loans that are CLO-eligible loan tranches and servicing assets;
(3) The open market CLO does not invest in ABS interests or in credit derivatives other than hedging transactions that are servicing assets to hedge risks of the open market CLO;
(4) All purchases of CLO-eligible loan tranches and other assets by the open market CLO issuing entity or through a warehouse facility used to accumulate the loans prior to the issuance of the CLO's ABS interests are made in open market transactions on an arm's-length basis;
(5) The CLO manager of the open market CLO is not entitled to receive any management fee or gain on sale at the time the open market CLO issues its ABS interests.

(c) CLO-eligible loan tranche. To qualify as a CLO-eligible loan tranche, a term loan of a syndicated credit facility to a commercial borrower must have the following features:
(1) A minimum of 5 percent of the face amount of the CLO-eligible loan tranche is retained by the lead arranger thereof until the earliest of the repayment, maturity, involuntary and
unscheduled acceleration, payment default, or bankruptcy default of such CLO-eligible loan tranche, provided that such lead arranger complies with limitations on hedging, transferring and pledging in §1234.12 with respect to the interest retained by the lead arranger.

(2) Lender voting rights within the credit agreement and any intercreditor or other applicable agreements governing such CLO-eligible loan tranche are defined so as to give holders of the CLO-eligible loan tranche consent rights with respect to, at minimum, any material waivers and amendments of such applicable documents, including but not limited to, adverse changes to the calculation or payments of amounts due to the holders of the CLO-eligible tranche, alterations to pro rata provisions, changes to voting provisions, and waivers of conditions precedent; and

(3) The pro rata provisions, voting provisions, and similar provisions applicable to the security associated with such CLO-eligible loan tranche under the CLO credit agreement and any intercreditor or other applicable agreements governing such CLO-eligible loan tranches are not materially less advantageous to the holder(s) of such CLO-eligible tranche than the terms of other tranches of comparable seniority in the broader syndicated credit facility.

(d) Disclosures. A sponsor relying on this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction and at least annually with respect to the information required by paragraph (d)(1) of this section and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption “Credit Risk Retention”:

(1) Open market CLOs. A complete list of every asset held by an open market CLO (or before the CLO’s closing, in a warehouse facility in anticipation of transfer into the CLO at closing), including the following information:

(i) The full legal name, Standard Industrial Classification (SIC) category code, and legal entity identifier (LEI) issued by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation (if an LEI has been obtained by the obligor) of the obligor of the loan or asset;

(ii) The full name of the specific loan tranche held by the CLO;

(iii) The face amount of the entire loan tranche held by the CLO, and the face amount of the portion thereof held by the CLO;

(iv) The price at which the loan tranche was acquired by the CLO; and

(v) For each loan tranche, the full legal name of the lead arranger subject to the sales and hedging restrictions of §1234.12; and

(2) CLO manager. The full legal name and form of organization of the CLO manager.

§ 1234.10 Qualified tender option bonds.

(a) Definitions. For purposes of this section, the following definitions shall apply:

Municipal security or municipal securities shall have the same meaning as the term “municipal securities” in Section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)) and any rules promulgated pursuant to such section.

Qualified tender option bond entity means an issuing entity with respect to tender option bonds for which each of the following applies:

(i) Such entity is collateralized solely by servicing assets and by municipal securities that have the same municipal issuer and the same underlying obligor or source of payment (determined without regard to any third-party credit enhancement), and such municipal securities are not subject to substitution.

(ii) Such entity issues no securities other than:

(A) A single class of tender option bonds with a preferred variable return payable out of capital that meets the requirements of paragraph (b) of this section, and

(B) One or more residual equity interests that, in the aggregate, are entitled to all remaining income of the issuing entity.
(C) The types of securities referred to in paragraphs (ii)(A) and (B) of this definition must constitute asset-backed securities.

(iii) The municipal securities held as assets by such entity are issued in compliance with Section 103 of the Internal Revenue Code of 1986, as amended (the “IRS Code”, 26 U.S.C. 103), such that the interest payments made on those securities are excludable from the gross income of the owners under Section 103 of the IRS Code.

(iv) The terms of all of the securities issued by the entity are structured so that all holders of such securities who are eligible to exclude interest received on such securities will be able to exclude that interest from gross income pursuant to Section 103 of the IRS Code or as “exempt-interest dividends” pursuant to Section 852(b)(5) of the IRS Code (26 U.S.C. 852(b)(5)) in the case of regulated investment companies under the Investment Company Act of 1940, as amended.

(v) Such entity has a legally binding commitment from a regulated liquidity provider as defined in §1234.6(a), to provide a 100 percent guarantee or liquidity coverage with respect to all of the issuing entity’s outstanding tender option bonds.

(vi) Such entity qualifies for monthly closing elections pursuant to IRS Revenue Procedure 2003–84, as amended or supplemented from time to time.

Tender option bond means a security which has features which entitle the holders to tender such bonds to the issuing entity for purchase at any time upon no more than 397 days’ notice, for a purchase price equal to the approximate amortized cost of the security, plus accrued interest, if any, at the time of tender.

(b) Risk retention options. Notwithstanding anything in this section, the sponsor with respect to an issuance of tender option bonds may retain an eligible vertical interest or any combination thereof, in accordance with the requirements of §1234.4; or an eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of §1234.4; or an interest that meets the requirements set forth in paragraph (c) of this section; or a municipal security that meets the requirements set forth in paragraph (d) of this section; or combinations of interests and securities described in paragraphs (b)(1) through (b)(3) of this section such that the sum of the percentages held in each form equals at least five.

(c) Tender option termination event. The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity may retain an interest that upon issuance meets the requirements of an eligible horizontal residual interest but that upon the occurrence of a “tender option termination event” as defined in Section 4.01(5) of IRS Revenue Procedure 2003–84, as amended or supplemented from time to time will meet the requirements of an eligible vertical interest.

(d) Retention of a municipal security outside of the qualified tender option bond entity. The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity may satisfy its risk retention requirements under this Section by holding municipal securities from the same issuance of municipal securities deposited in the qualified tender option bond entity, the face value of which remains municipal securities equal to 5 percent of the face value of the municipal securities deposited in the qualified tender option bond entity.

(e) Disclosures. The sponsor shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption “Credit Risk Retention”:

(1) The name and form of organization of the qualified tender option bond entity;
§ 1234.11 Allocation of risk retention to an originator.

(a) In general. A sponsor choosing to retain an eligible vertical interest or an eligible horizontal residual interest (including an eligible horizontal cash reserve account), or combination thereof under §1234.4, with respect to a securitization transaction may offset the amount of its risk retention requirements under §1234.4 by the amount of the eligible interests, respectively, acquired by an originator of one or more of the securitized assets if:

1. At the closing of the securitization transaction:
   (i) The originator acquires the eligible interest from the sponsor and retains such interest in the same manner and proportion (as between horizontal and vertical interests) as the sponsor under §1234.4, as such interest was held prior to the acquisition by the originator;
   (ii) The ratio of the percentage of eligible interests acquired and retained by the originator to the percentage of eligible interests otherwise required to be retained by the sponsor pursuant to §1234.4, does not exceed the ratio of:
   (A) The unpaid principal balance of all the securitized assets originated by the originator; to
   (B) The unpaid principal balance of all the securitized assets in the securitization transaction;
   (iii) The originator acquires and retains at least 20 percent of the aggregate risk retention amount otherwise required to be retained by the sponsor pursuant to §1234.4; and
   (iv) The originator purchases the eligible interests from the sponsor at a price that is equal, on a dollar-for-dollar basis, to the amount by which the sponsor's required risk retention is reduced in accordance with this section, by payment to the sponsor in the form of:
   (A) Cash; or
   (B) A reduction in the price received by the originator from the sponsor or depositor for the assets sold by the originator to the sponsor or depositor for inclusion in the pool of securitized assets.

(b) Disclosures. In addition to the disclosures required pursuant to §1234.4(c), the sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, in written form under the caption ‘‘Credit Risk Retention’’, the name and form of organization of any originator that will acquire and retain (or has acquired and
§ 1234.12 Hedging, transfer and financing prohibitions.

(a) Transfer. Except as permitted by §1234.7(b)(8), and subject to §1234.5, a retaining sponsor may not sell or otherwise transfer any interest or assets that the sponsor is required to retain pursuant to subpart B of this part to any person other than an entity that is and remains a majority-owned affiliate of the sponsor and each such majority-owned affiliate shall be subject to the same restrictions.

(b) Prohibited hedging by sponsor and affiliates. A retaining sponsor and its affiliates may not purchase or sell a security, or other financial instrument, or enter into an agreement, derivative or other position, with any other person if:

(1) Payments on the security or other financial instrument or under the agreement, derivative, or position are materially related to the credit risk of one or more particular ABS interests that the retaining sponsor (or any of its majority-owned affiliates) is required to retain with respect to a securitization transaction pursuant to subpart B of this part or one or more of the particular securitized assets that collateralize the asset-backed securities issued in the securitization transaction; and

(2) The security, instrument, agreement, derivative, or position in any way reduces or limits the financial exposure of the retaining sponsor (or any of its majority-owned affiliates) to the credit risk of one or more of the particular ABS interests that the retaining sponsor (or any of its majority-owned affiliates) is required to retain with respect to a securitization transaction pursuant to subpart B of this part or one or more of the particular securitized assets that collateralize the asset-backed securities issued in the securitization transaction.

(c) Prohibited hedging by issuing entity. The issuing entity in a securitization transaction may not purchase or sell a security or other financial instrument, or enter into an agreement, derivative or position, with any other person if:

(1) Payments on the security or other financial instrument or under the agreement, derivative or position are materially related to the credit risk of one or more particular ABS interests that the retaining sponsor (or any of its majority-owned affiliates) is required to retain with respect to the securitization transaction (or any of its majority-owned affiliates) is required to retain with respect to the securitization transaction pursuant to subpart B of this part; and

(2) The security, instrument, agreement, derivative, or position in any way reduces or limits the financial exposure of the retaining sponsor (or any of its majority-owned affiliates) to the credit risk of one or more of the particular ABS interests that the sponsor...
(or any of its majority-owned affiliates) is required to retain pursuant to subpart B of this part.

(d) Permitted hedging activities. The following activities shall not be considered prohibited hedging activities under paragraph (b) or (c) of this section:

(1) Hedging the interest rate risk (which does not include the specific interest rate risk, known as spread risk, associated with the ABS interest that is otherwise considered part of the credit risk) or foreign exchange risk arising from one or more of the particular ABS interests required to be retained by the sponsor (or any of its majority-owned affiliates) under subpart B of this part or one or more of the particular securitized assets that underlie the asset-backed securities issued in the securitization transaction; or

(2) Purchasing or selling a security or other financial instrument or entering into an agreement, derivative, or other position with any third party where payments on the security or other financial instrument or under the agreement, derivative, or position are based, directly or indirectly, on an index of instruments that includes asset-backed securities if:

(i) Any class of ABS interests in the issuing entity that were issued in connection with the securitization transaction and that are included in the index represents no more than 10 percent of the dollar-weighted average (or corresponding weighted average in the currency in which the ABS interests are issued, as applicable) of all instruments included in the index; and

(ii) All classes of ABS interests in all issuing entities that were issued in connection with any securitization transaction in which the sponsor (or any of its majority-owned affiliates) is required to retain an interest pursuant to subpart B of this part and that are included in the index represent, in the aggregate, no more than 20 percent of the dollar-weighted average (or corresponding weighted average in the currency in which the ABS interests are issued, as applicable) of all instruments included in the index.

(e) Prohibited non-recourse financing. Neither a retaining sponsor nor any of its affiliates may pledge as collateral for any obligation (including a loan, repurchase agreement, or other financing transaction) any ABS interest that the sponsor is required to retain with respect to a securitization transaction pursuant to subpart B of this part unless such obligation is with full recourse to the sponsor or affiliate, respectively.

(f) Duration of the hedging and transfer restrictions—(1) General rule. Except as provided in paragraph (f)(2) of this section, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire on or after the date that is the latest of:

(i) The date on which the total unpaid principal balance (if applicable) of the securitized assets that collateralize the securitization transaction has been reduced to 33 percent of the total unpaid principal balance of the securitized assets as of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction; or

(ii) The date on which the total unpaid principal obligations under the ABS interests issued in the securitization transaction has been reduced to 33 percent of the total unpaid principal obligations of the ABS interests at closing of the securitization transaction; or

(iii) Two years after the date of the closing of the securitization transaction.

(2) Securitizations of residential mortgages. (i) If all of the assets that collateralize a securitization transaction subject to risk retention under this part are residential mortgages, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire on or after the date that is the later of:

(A) Five years after the date of the closing of the securitization transaction; or

(B) The date on which the total unpaid principal balance of the residential mortgages that collateralize the securitization transaction has been reduced to 25 percent of the total unpaid principal balance of such residential mortgage. The provisions of paragraphs (a) and (b) of this section shall expire on or after the date that is the later of:

(A) Five years after the date of the closing of the securitization transaction or

(B) The date on which the total unpaid principal balance of the residential mortgages that collateralize the securitization transaction has been reduced to 25 percent of the total unpaid principal balance of such residential mortgage.
mortgages at the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction.

(ii) Notwithstanding paragraph (f)(2)(i) of this section, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire with respect to the sponsor of a securitization transaction described in paragraph (f)(2)(i) of this section on or after the date that is seven years after the date of the closing of the securitization transaction.

(3) Conservatorship or receivership of sponsor. A conservator or receiver of the sponsor (or any other person holding risk retention pursuant to this part) of a securitization transaction is permitted to sell or hedge any economic interest in the securitization transaction if the conservator or receiver has been appointed pursuant to any provision of federal or State law (or regulation promulgated thereunder) that provides for the appointment of the Federal Deposit Insurance Corporation, or an agency or instrumentality of the United States or of a State as conservator or receiver, including without limitation any of the following authorities:

(i) 12 U.S.C. 1811;
(ii) 12 U.S.C. 1787;
(iii) 12 U.S.C. 4617; or

(4) Revolving pool securitizations. The provisions of paragraphs (f)(1) and (2) are not available to sponsors of revolving pool securitizations with respect to the forms of risk retention specified in §1234.5.

Subpart D—Exceptions and Exemptions

§1234.13 Exemption for qualified residential mortgages.

(a) Definitions. For purposes of this section, the following definitions shall apply:

Currently performing means the borrower in the mortgage transaction is not currently thirty (30) days or more past due, in whole or in part, on the mortgage transaction.

Qualified residential mortgage means a “qualified mortgage” as defined in section 129C of the Truth in Lending Act (15 U.S.C.1639c) and regulations issued thereunder, as amended from time to time.

(b) Exception. A sponsor shall be exempt from the risk retention requirements in subpart B of this part with respect to any securitization transaction, if:

(1) All of the assets that collateralize the asset-backed securities are qualified residential mortgages or servicing assets;

(2) None of the assets that collateralize the asset-backed securities are asset-backed securities;

(3) As of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction, each qualified residential mortgage collateralizing the asset-backed securities is currently performing; and

(4)(i) The depositor with respect to the securitization transaction certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages or servicing assets and has concluded that its internal supervisory controls are effective; and

(ii) The evaluation of the effectiveness of the depositor’s internal supervisory controls must be performed, for each issuance of an asset-backed security in reliance on this section, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (b)(4)(i) of this section to potential investors in the issuing entity, and, upon request, to the Commission and its appropriate Federal banking agency, if any.

(c) Repurchase of loans subsequently determined to be non-qualified after closing. A sponsor that has relied on the exemption provided in paragraph (b) of
this section with respect to a securitization transaction shall not lose such exemption with respect to such transaction if, after closing of the securitization transaction, it is determined that one or more of the residential mortgage loans collateralizing the asset-backed securities does not meet all of the criteria to be a qualified residential mortgage provided that:

(1) The depositor complied with the certification requirement set forth in paragraph (b)(4) of this section;

(2) The sponsor repurchases the loan(s) from the issuing entity at a price at least equal to the remaining aggregate unpaid principal balance and accrued interest on the loan(s) no later than 90 days after the determination that the loan(s) do not satisfy the requirements to be a qualified residential mortgage; and

(3) The sponsor promptly notifies, or causes to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is (or are) required to be repurchased by the sponsor pursuant to paragraph (c)(2) of this section, including the amount of such repurchased loan(s) and the cause for such repurchase.

§ 1234.14 Definitions applicable to qualifying commercial real estate loans.

The following definitions apply for purposes of §§ 1234.15 and 1234.17:

Appraisal Standards Board means the board of the Appraisal Foundation that develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP), establishing generally accepted standards for the appraisal profession.

Combined loan-to-value (CLTV) ratio means, at the time of origination, the sum of the principal balance of a first-lien mortgage loan on the property, plus the principal balance of any junior-lien mortgage loan that, to the creditor’s knowledge, would exist at the closing of the transaction and that is secured by the same property, divided by:

(1) For acquisition funding, the lesser of the purchase price or the estimated market value of the real property based on an appraisal that meets the requirements set forth in §1234.17(a)(2)(ii); or

(2) For refinancing, the estimated market value of the real property based on an appraisal that meets the requirements set forth in §1234.17(a)(2)(i).

Commercial real estate (CRE) loan means:

(1) A loan secured by a property with five or more single family units, or by nonfarm nonresidential real property, the primary source (50 percent or more) of repayment for which is expected to be:

(i) The proceeds of the sale, refinancing, or permanent financing of the property; or

(ii) Rental income associated with the property;

(2) Loans secured by improved land if the obligor owns the fee interest in the land and the land is leased to a third party who owns all improvements on the land, and the improvements are nonresidential or residential with five or more single family units; and

(3) Does not include:

(i) A land development and construction loan (including 1- to 4-family residential or commercial construction loans);

(ii) Any other land loan; or

(iii) An unsecured loan to a developer.

Debt service coverage (DSC) ratio means the ratio of:

(1) The annual NOI less the annual replacement reserve of the CRE property at the time of origination of the CRE loan(s); to

(2) The sum of the borrower’s annual payments for principal and interest (calculated at the fully indexed rate) on any debt obligation.

Environmental risk assessment means a process for determining whether a property is contaminated or exposed to any condition or substance that could result in contamination that has an adverse effect on the market value of the property or the realization of the collateral value.

First lien means a lien or encumbrance on property that has priority over all other liens or encumbrances on the property.
§ 1234.15 Qualifying commercial real estate loans.

(a) General exception. Commercial real estate loans that are securitized through a securitization transaction shall be subject to a 0 percent risk retention requirement under subpart B of this part, provided that the following conditions are met:

(1) The CRE assets meet the underwriting standards set forth in §1234.17;

(2) The securitization transaction is collateralized solely by CRE loans and by servicing assets;
(3) The securitization transaction does not permit reinvestment periods; and

(4) The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of asset-backed securities of the issuing entity, and, upon request, to the Commission, and to the FHFA, in written form under the caption “Credit Risk Retention” a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying CRE loans with 0 percent risk retention.

(b) Risk retention requirement. For any securitization transaction described in paragraph (a) of this section, the percentage of risk retention required under §1234.3(a) is reduced by the percentage evidenced by the ratio of the unpaid principal balance of the qualifying CRE loans to the total unpaid principal balance of CRE loans that are included in the pool of assets collateralizing the asset-backed securities issued pursuant to the securitization transaction (the qualifying asset ratio); provided that:

(1) The qualifying asset ratio is measured as of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction; and

(2) If the qualifying asset ratio would exceed 50 percent, the qualifying asset ratio shall be deemed to be 50 percent; and

(3) The disclosure required by paragraph (a)(4) of this section also includes descriptions of the qualifying CRE loans and descriptions of the CRE loans that are not qualifying CRE loans, and the material differences between the group of qualifying CRE loans and CRE loans that are not qualifying CRE loans with respect to the composition of each group’s loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral.

(c) Exception for securitizations of qualifying CRE only. Notwithstanding other provisions of this section, the risk retention requirements of subpart B of this part shall not apply to securitization transactions where the transaction is collateralized solely by servicing assets and qualifying CRE loans.

(d) Record maintenance. A regulated entity must retain the disclosures required in paragraphs (a) and (b) of this section and the certification required in §1234.17(a)(10) of this part, in its records until three years after all ABS interests issued in the securitization are no longer outstanding. The regulated entity must provide the disclosures and certifications upon request to the Commission and the FHFA.

(79 FR 77765, Dec. 24, 2014)

§1234.16 [Reserved]

§1234.17 Underwriting standards for qualifying CRE loans.

(a) Underwriting, product and other standards. (1) The CRE loan must be secured by the following:

(i) An enforceable first lien, documented and recorded appropriately pursuant to applicable law, on the commercial real estate and improvements;

(2) An assignment of:

(A) Leases and rents and other occupancy agreements related to the commercial real estate or improvements for which the borrower or an operating affiliate is a lessor or similar party and all payments under such leases and occupancy agreements; and

(B) An assignment of all other payments due to the borrower or due to any operating affiliate in connection with the operation of the property described in paragraph (a)(1)(i) of this section; and

(C) The right to enforce the agreements described in paragraph (a)(1)(ii)(A) of this section and the

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agreements under which payments under paragraph (a)(1)(ii)(B) of this section are due against, and collect amounts due from, each lessee, occupant or other obligor whose payments were assigned pursuant to paragraphs (a)(1)(ii)(A) or (B) of this section upon a breach by the borrower of any of the terms of, or the occurrence of any other event of default (however denominated) under, the loan documents relating to such CRE loan; and

(iii) A security interest:

(A) In all interests of the borrower and any applicable operating affiliate in all tangible and intangible personal property of any kind, in or used in the operation of or in connection with, pertaining to, arising from, or constituting, any of the collateral described in paragraphs (a)(1)(i) or (ii) of this section; and

(B) In the form of a perfected security interest if the security interest in such property can be perfected by the filing of a financing statement, fixture filing, or similar document pursuant to the law governing the perfection of such security interest;

(ii) Prior to origination of the CRE loan, the originator:

(A) Verified and documented the current financial condition of the borrower and each operating affiliate;

(B) Obtained a written appraisal of the real property securing the loan that:

(A) Had an effective date not more than six months prior to the origination date of the loan by a competent and appropriately State-certified or State-licensed appraiser;

(B) Conforms to generally accepted appraisal standards as evidenced by the USPAP and the appraisal requirements1 of the Federal banking agencies; and

(C) Provides an “as is” opinion of the market value of the real property, which includes an income approach;2

(iii) Qualified the borrower for the CRE loan based on a monthly payment amount derived from level monthly payments consisting of both principal and interest (at the fully-indexed rate)

1 12 CFR part 34, subpart C (OCC); 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G (Board); and 12 CFR part 323 (FDIC).

2 See USPAP, Standard 1.
servicer on an ongoing basis, but not less frequently than quarterly, including information on existing, maturing and new leasing or rent-roll activity for the property securing the loan, as appropriate; and
(ii) Impose prohibitions on:
(A) The creation or existence of any other security interest with respect to the collateral for the CRE loan described in paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section, except as provided in paragraph (a)(4) of this section;
(B) The transfer of any collateral for the CRE loan described in paragraph (a)(1)(i) or (a)(1)(ii)(A) of this section or of any other collateral consisting of fixtures, furniture, furnishings, machinery or equipment other than any such fixture, furniture, furnishings, machinery or equipment that is obsolete or surplus; and
(C) Any change to the name, location or organizational structure of any borrower, operating affiliate or other pledgor unless such borrower, operating affiliate or other pledgor shall have given the holder of the loan at least 30 days advance notice and, pursuant to applicable law governing perfection and priority, the holder of the loan is able to take all steps necessary to continue its perfection and priority during such 30-day period.
(iii) Require each borrower and each operating affiliate to:
(A) Maintain insurance that protects against loss on collateral for the CRE loan described in paragraph (a)(1)(i) of this section for an amount no less than the replacement cost of the property improvements, and names the originator or any subsequent holder of the loan as an additional insured or lender loss payee;
(B) Pay taxes, charges, fees, and claims, where non-payment might give rise to a lien on collateral for the CRE loan described in paragraphs (a)(1)(i) and (ii) of this section;
(C) Take any action required to:
(I) Protect the security interest and the enforceability and priority thereof in the collateral described in paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section and defend such collateral against claims adverse to the originator’s or any subsequent holder’s interest; and
(2) Perfect the security interest of the originator or any subsequent holder of the loan in any other collateral for the CRE loan to the extent that such security interest is required by this section to be perfected;
(D) Permit the originator or any subsequent holder of the loan, and the servicer, to inspect any collateral for the CRE loan and the books and records of the borrower or other party relating to any collateral for the CRE loan;
(E) Maintain the physical condition of collateral for the CRE loan described in paragraph (a)(1)(i) of this section;
(F) Comply with all environmental, zoning, building code, licensing and other laws, regulations, agreements, covenants, use restrictions, and prof- fers applicable to collateral for the CRE loan described in paragraph (a)(1)(i) of this section;
(G) Comply with leases, franchise agreements, condominium declarations, and other documents and agreements relating to the operation of collateral for the CRE loan described in paragraph (a)(1)(i) of this section, and to not modify any material terms and conditions of such agreements over the term of the loan without the consent of the originator or any subsequent holder of the loan, or the servicer; and
(H) Not materially alter collateral for the CRE loan described in paragraph (a)(1)(i) of this section without the consent of the originator or any subsequent holder of the loan, or the servicer.
(4) The loan documentation for the CRE loan prohibits the borrower and each operating affiliate from obtaining a loan secured by a junior lien on collateral for the CRE loan described in paragraph (a)(1)(i) or (a)(1)(ii)(A) of this section, unless:
(i) The sum of the principal amount of such junior lien loan, plus the principal amount of all other loans secured by collateral described in paragraph (a)(1)(i) or (a)(1)(ii)(A) of this section, does not exceed the applicable CLTV ratio in paragraph (a)(5) of this section, based on the appraisal at origination of such junior lien loan; or
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(ii) Such loan is a purchase money obligation that financed the acquisition of machinery or equipment and the borrower or operating affiliate (as applicable) pledges such machinery and equipment as additional collateral for the CRE loan.

(i) At origination, the applicable loan-to-value ratios for the loan are:

(i) LTV less than or equal to 65 percent and CLTV less than or equal to 70 percent; or

(ii) LTV less than or equal to 60 percent and CLTV less than or equal to 65 percent, if an appraisal used to meet the requirements set forth in paragraph (a)(2)(ii) of this section used a direct capitalization rate, and that rate is less than or equal to the sum of:

(A) The 10-year swap rate, as reported in the Federal Reserve’s H.15 Report (or any successor report) as of the date concurrent with the effective date of such appraisal; and

(B) 300 basis points.

(ii) If the appraisal required under paragraph (a)(2)(ii) of this section included a direct capitalization method using an overall capitalization rate, that rate must be disclosed to potential investors in the securitization.

(6) All loan payments required to be made under the loan agreement are:

(i) Based on level monthly payments of principal and interest (at the fully indexed rate) to fully amortize the debt over a term that does not exceed 25 years, or 30 years for a qualifying multifamily loan; and

(ii) To be made no less frequently than monthly over a term of at least ten years.

(7) Under the terms of the loan agreement:

(i) Any maturity of the note occurs no earlier than ten years following the date of origination;

(ii) The borrower is not permitted to defer repayment of principal or payment of interest; and

(iii) The interest rate on the loan is:

(A) A fixed interest rate;

(B) An adjustable interest rate and the borrower, prior to or concurrently with origination of the CRE loan, obtained a derivative that effectively results in a fixed interest rate; or

(C) An adjustable interest rate and the borrower, prior to or concurrently with origination of the CRE loan, obtained a derivative that established a cap on the interest rate for the term of the loan, and the loan meets the underwriting criteria in paragraphs (a)(2)(vi) and (vii) of this section using the maximum interest rate allowable under the interest rate cap.

(8) The originator does not establish an interest reserve at origination to fund all or part of a payment on the loan.

(9) At the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction, all payments due on the loan are contractually current.

(10)(i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all qualifying CRE loans that collateralize the asset-backed security and that reduce the sponsor’s risk retention requirement under § 1234.15 meet all of the requirements set forth in paragraphs (a)(1) through (9) of this section and has concluded that its internal supervisory controls are effective;

(ii) The evaluation of the effectiveness of the depositor’s internal supervisory controls referenced in paragraph (a)(10)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security;

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (a)(10)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any; and

(iv) Within two weeks of the closing of the CRE loan by its originator or, if sooner, prior to the transfer of such CRE loan to the issuing entity, the originator shall have obtained a UCC lien search from the jurisdiction of organization of the borrower and each operating affiliate, that does not report,
Community-focused residential mortgage means a residential mortgage exempt from the definition of “covered transaction” under §1026.43(a)(3)(iv) and (v) of the CFPB’s Regulation Z (12 CFR 1026.43(a)).

First pay class means a class of ABS interests for which all interests in the class are entitled to the same priority of payment and that, at the time of closing of the transaction, is entitled to repurchases of principal and payments of interest prior to or pro-rata with all other classes of securities collateralized by the same pool of first-lien residential mortgages, until such class has no principal or notional balance remaining.

Inverse floater means an ABS interest issued as part of a securitization transaction for which interest or other income is payable to the holder based on a rate or formula that varies inversely to a reference rate of interest.

Qualifying three-to-four unit residential mortgage loan means a mortgage loan that is:

(1) Secured by a dwelling (as defined in 12 CFR 1026.2(a)(19)) that is owner occupied and contains three-to-four housing units;

(2) Is deemed to be for business purposes for purposes of Regulation Z under 12 CFR part 1026, Supplement I, paragraph 3(a)(5)(i); and

(3) Otherwise meets all of the requirements to qualify as a qualified mortgage under §1026.43(e) and (f) of Regulation Z (12 CFR 1026.43(e) and (f)) as if the loan were a covered transaction under that section.

(b) This part shall not apply to:

(1) U.S. Government-backed securitizations. Any securitization transaction that:

(i) Is collateralized solely by residential, multifamily, or health care facility mortgage loan assets that are insured or guaranteed (in whole or in part) as to the payment of principal and interest by the United States or an agency of the United States, and servicing assets; or

(ii) Involves the issuance of asset-backed securities that:

(A) Are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States; and

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§1234.19 General exemptions.

(a) Definitions. For purposes of this section, the following definitions shall apply:
(B) Are collateralized solely by residential, multifamily, or health care facility mortgage loan assets or interests in such assets, and servicing assets.

(2) Certain agricultural loan securitizations. Any securitization transaction that is collateralized solely by loans or other assets made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation, and servicing assets;

(3) State and municipal securitizations. Any asset-backed security that is a security issued or guaranteed by any State, or by any political subdivision of a State, or by any public instrumentality of a State that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)); and

(4) Qualified scholarship funding bonds. Any asset-backed security that meets the definition of a qualified scholarship funding bond, as set forth in section 150(d)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 150(d)(2)).

(5) Pass-through resecuritizations. Any securitization transaction that:

(i) Is collateralized solely by servicing assets, and by asset-backed securities:

(A) For which credit risk was retained as required under subpart B of this part; or

(B) That were exempted from the credit risk retention requirements of this part pursuant to subpart D of this part;

(ii) Is structured so that it involves the issuance of only a single class of ABS interests; and

(iii) Provides for the pass-through of all principal and interest payments received on the underlying asset-backed securities (net of expenses of the issuing entity) to the holders of such class.

(6) First-pay-class securitizations. Any securitization transaction that:

(i) Is collateralized solely by servicing assets, and by first-pay classes of asset-backed securities collateralized by first-lien residential mortgages on properties located in any state:

(A) For which credit risk was retained as required under subpart B of this part; or

(B) That were exempted from the credit risk retention requirements of this part pursuant to subpart D of this part;

(ii) Does not provide for any ABS interest issued in the securitization transaction to share in realized principal losses other than pro rata with all other ABS interests issued in the securitization transaction based on the current unpaid principal balance of such ABS interests at the time the loss is realized;

(iii) Is structured to reallocate prepayment risk;

(iv) Does not reallocate credit risk (other than as a consequence of reallocation of prepayment risk); and

(v) Does not include any inverse floater or similarly structured ABS interest.

(7) Seasoned loans. (i) Any securitization transaction that is collateralized solely by servicing assets, and by seasoned loans that meet the following requirements:

(A) The loans have not been modified since origination; and

(B) None of the loans have been delinquent for 30 days or more.

(ii) For purposes of this paragraph, a seasoned loan means:

(A) With respect to asset-backed securities collateralized by residential mortgages, a loan that has been outstanding and performing for the longer of:

(1) A period of five years; or

(2) Until the outstanding principal balance of the loan has been reduced to 25 percent of the original principal balance.

(3) Notwithstanding paragraphs (b)(7)(ii)(A)(1) and (2) of this section, any residential mortgage loan that has been outstanding and performing for a period of at least seven years shall be deemed a seasoned loan.

(B) With respect to all other classes of asset-backed securities, a loan that has been outstanding and performing for the longer of:

(1) A period of at least two years; or

(2) Until the outstanding principal balance of the loan has been reduced to
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33 percent of the original principal balance.

(8) Certain public utility securitizations.

(i) Any securitization transaction where the asset-backed securities issued in the transaction are secured by the intangible property right to collect charges for the recovery of specified costs and such other assets, if any, of an issuing entity that is wholly owned, directly or indirectly, by an investor owned utility company that is subject to the regulatory authority of a State public utility commission or other appropriate State agency.

(ii) For purposes of this paragraph:

(A) Specified cost means any cost identified by a State legislature as appropriate for recovery through securitization pursuant to specified cost recovery legislation; and

(B) Specified cost recovery legislation means legislation enacted by a State that:

(1) Authorizes the investor owned utility company to apply for, and authorizes the public utility commission or other appropriate State agency to issue, a financing order determining the amount of specified costs the utility will be allowed to recover;

(2) Provides that pursuant to a financing order, the utility acquires an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are non-bypassable and will be paid by customers within the utility’s historic service territory who receive utility goods or services through the utility’s transmission and distribution system, even if those customers elect to purchase these goods or services from a third party; and

(3) Guarantees that neither the State nor any of its agencies has the authority to rescind or amend the financing order, to revise the amount of specified costs or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by the specified cost recovery legislation.

(c) Exemption for securitizations of assets issued, insured or guaranteed by the United States. This part shall not apply to any securitization transaction if the asset-backed securities issued in the transaction are:

(1) Collateralized solely by obligations issued by the United States or an agency of the United States and servicing assets;

(2) Collateralized solely by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than those referred to in paragraph (b)(1)(i) of this section) and servicing assets; or

(3) Fully guaranteed as to the timely payment of principal and interest by the United States or any agency of the United States;

(d) Federal Deposit Insurance Corporation securitizations. This part shall not apply to any securitization transaction that is sponsored by the Federal Deposit Insurance Corporation acting as conservator or receiver under any provision of the Federal Deposit Insurance Act or of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) Reduced requirement for certain student loan securitizations. The 5 percent risk retention requirement set forth in §1234.4 shall be modified as follows:

(1) With respect to a securitization transaction that is collateralized solely by student loans made under the Federal Family Education Loan Program ("FFELP loans") that are guaranteed as to 100 percent of defaulted principal and accrued interest, and servicing assets, the risk retention requirement shall be 0 percent;

(2) With respect to a securitization transaction that is collateralized solely by FFELP loans that are guaranteed as to at least 98 percent but less than 100 percent of defaulted principal and accrued interest, and servicing assets, the risk retention requirement shall be 2 percent; and

(3) With respect to any other securitization transaction that is collateralized solely by FFELP loans, and servicing assets, the risk retention requirement shall be 3 percent.

(f) Community-focused lending securitizations. (1) This part shall not apply to any securitization transaction if the asset-backed securities issued in
§ 1234.20 Safe harbor for certain foreign-related transactions.

(a) Definitions. For purposes of this section, the following definition shall apply:

U.S. person means:

(i) Any of the following:

(A) Any natural person resident in the United States;

(B) Any partnership, corporation, limited liability company, or other organization or entity organized or incorporated under the laws of any State or of the United States;

(C) Any estate of which any executor or administrator is a U.S. person (as defined under any other clause of this definition);

(D) Any trust of which any trustee is a U.S. person (as defined under any other clause of this definition);

(E) Any agency or branch of a foreign entity located in the United States;

(F) Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person (as defined under any other clause of this definition);

(G) Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and

the transaction are collateralized solely by community-focused residential mortgages and servicing assets.

(2) For any securitization transaction that includes both community-focused residential mortgages and residential mortgages that are not exempt from risk retention under this part, the percent of risk retention required under §1234.4(a) is reduced by the ratio of the unpaid principal balance of the community-focused residential mortgages to the total unpaid principal balance of residential mortgages that are included in the pool of assets collateralizing the asset-backed securities issued pursuant to the securitization transaction (the community-focused residential mortgage asset ratio); provided that:

(i) The community-focused residential mortgage asset ratio is measured as of the cut-off date or similar date for establishing the composition of the pool assets collateralizing the asset-backed securities issued pursuant to the securitization transaction; and

(ii) If the community-focused residential mortgage asset ratio would exceed 50 percent, the community-focused residential mortgage asset ratio shall be deemed to be 50 percent.

(g) Exemptions for securitizations of certain three-to-four unit mortgage loans. A sponsor shall be exempt from the risk retention requirements in subpart B of this part with respect to any securitization transaction if:

(1)(i) The asset-backed securities issued in the transaction are collateralized solely by qualifying three-to-four unit residential mortgage loans and servicing assets; or

(ii) The asset-backed securities issued in the transaction are collateralized solely by qualifying three-to-four unit residential mortgage loans, qualified residential mortgages as defined in §1234.13, and servicing assets.

(2) The depositor with respect to the securitization provides the certifications set forth in §1234.13(b)(4) with respect to the process for ensuring that all assets that collateralize the asset-backed securities issued in the transaction are qualifying three-to-four unit residential mortgage loans, qualified residential mortgages, or servicing assets; and

(3) The sponsor of the securitization complies with the repurchase requirements in §1234.13(c) with respect to a loan if, after closing, it is determined that the loan does not meet all of the criteria to be either a qualified residential mortgage or a qualifying three-to-four unit residential mortgage loan, as appropriate.

(h) Rule of construction. Securitization transactions involving the issuance of asset-backed securities that are either issued, insured, or guaranteed by, or are collateralized by obligations issued by, or loans that are issued, insured, or guaranteed by, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal home loan bank shall not on that basis qualify for exemption under this part.
(H) Any partnership, corporation, limited liability company, or other organization or entity if:
(1) Organized or incorporated under the laws of any foreign jurisdiction; and
(2) Formed by a U.S. person (as defined under any other clause of this definition) principally for the purpose of investing in securities not registered under the Act; and
(ii) "U.S. person(s)" does not include:
(A) Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a person not constituting a U.S. person (as defined in paragraph (i) of this section) by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;
(B) Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person (as defined in paragraph (i) of this section) if:
(i) An executor or administrator of the estate who is not a U.S. person (as defined in paragraph (i) of this section) has sole or shared investment discretion with respect to the assets of the estate; and
(ii) The estate is governed by foreign law;
(C) Any trust of which any professional fiduciary acting as trustee is a U.S. person (as defined in paragraph (i) of this section), if a trustee who is not a U.S. person (as defined in paragraph (i) of this section) has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person (as defined in paragraph (i) of this section);
(D) An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;
(E) Any agency or branch of a U.S. person (as defined in paragraph (i) of this section) located outside the United States if:
(i) The agency or branch operates for valid business reasons; and
(ii) The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located;
(F) The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

(b) In general. This part shall not apply to a securitization transaction if all the following conditions are met:
(1) The securitization transaction is not required to be and is not registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.);
(2) No more than 10 percent of the dollar value (or equivalent amount in the currency in which the ABS interests are issued, as applicable) of all classes of ABS interests in the securitization transaction are sold or transferred to U.S. persons or for the account or benefit of U.S. persons;
(3) Neither the sponsor of the securitization transaction nor the issuing entity is:
(i) Chartered, incorporated, or organized under the laws of the United States or any State;
(ii) An unincorporated branch or office (wherever located) of an entity chartered, incorporated, or organized under the laws of the United States or any State; or
(iii) An unincorporated branch or office located in the United States or any State of an entity that is chartered, incorporated, or organized under the laws of a jurisdiction other than the United States or any State; and
(4) If the sponsor or issuing entity is chartered, incorporated, or organized under the laws of a jurisdiction other than the United States or any State, no more than 25 percent (as determined based on unpaid principal balance) of the assets that collateralize the ABS interests sold in the securitization transaction were acquired by the sponsor or issuing entity, directly or indirectly, from:
(i) A majority-owned affiliate of the sponsor or issuing entity that is chartered, incorporated, or organized under
the laws of the United States or any State; or
(ii) An unincorporated branch or office of the sponsor or issuing entity that is located in the United States or any State.

(c) Evasions prohibited. In view of the objective of these rules and the policies underlying Section 15G of the Exchange Act, the safe harbor described in paragraph (b) of this section is not available with respect to any transaction or series of transactions that, although in technical compliance with paragraphs (a) and (b) of this section, is part of a plan or scheme to evade the requirements of section 15G and this part. In such cases, compliance with section 15G and this part is required.

§ 1234.21 Additional exemptions.

(a) Securitization transactions. The federal agencies with rulewriting authority under section 15G(b) of the Exchange Act (15 U.S.C. 78o-11(b)) with respect to the type of assets involved may jointly provide a total or partial exemption of any securitization transaction as such agencies determine may be appropriate in the public interest and for the protection of investors.

(b) Exceptions, exemptions, and adjustments. The Federal banking agencies and the Commission, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, may jointly adopt or issue exemptions, exceptions or adjustments to the requirements of this part, including exemptions, exceptions or adjustments for classes of institutions or assets in accordance with section 15G(e) of the Exchange Act (15 U.S.C. 78o-11(e)).

§ 1234.22 Periodic review of the QRM definition, exempted three-to-four unit residential mortgage loans, and community-focused residential mortgage exemption

(a) The Federal banking agencies and the Commission, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, shall commence a review of the definition of qualified residential mortgage in §1234.13, a review of the community-focused residential mortgage exemption in §1234.19(f), and a review of the exemption for qualifying three-to-four unit residential mortgage loans in §1234.19(g):

(1) No later than four years after the effective date of the rule (as it relates to securitizers and originators of asset-backed securities collateralized by residential mortgages), five years following the completion of such initial review, and every five years thereafter; and

(2) At any time, upon the request of any Federal banking agency, the Commission, the Federal Housing Finance Agency or the Department of Housing and Urban Development, specifying the reason for such request, including as a result of any amendment to the definition of qualified mortgage or changes in the residential housing market.

(b) The Federal banking agencies, the Commission, the Federal Housing Finance Agency and the Department of Housing and Urban Development shall publish in the FEDERAL REGISTER notice of the commencement of a review and, in the case of a review commenced under paragraph (a)(2) of this section, the reason an agency is requesting such review. After completion of any review, but no later than six months after the publication of the notice announcing the review, unless extended by the agencies, the agencies shall jointly publish a notice disclosing the determination of their review. If the agencies determine to amend the definition of qualified residential mortgage, the agencies shall complete any required rulemaking within 12 months of publication in the FEDERAL REGISTER of such notice disclosing the determination of their review, unless extended by the agencies.
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§ 1235.3 Establishment and evaluation of a record retention program.

(a) Establishment. Each regulated entity and the Office of Finance shall establish and maintain a written record retention program and provide a copy of such program to the Deputy Director of the Division of Enterprise Regulation, or his or her designee, or the Deputy Director for the Division of Federal Home Loan Bank Regulation, or his or her designee, as appropriate, within 180 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 each regulated entity and the Office of Finance shall evaluate in writing the adequacy and effectiveness of the record retention program at least

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every two years and provide a copy of the evaluation to the board of directors and the Director.

§ 1235.4 Minimum requirements of a record retention program.

(a) General minimum requirements. The record retention program established and maintained by each regulated entity and the Office of Finance under § 1235.3 shall:

(1) Assure that retained records are complete and accurate;

(2) Assure that the form of retained records and the retention period—

(i) Are appropriate to support administrative, business, external and internal audit functions, and litigation of the regulated entity or the Office of Finance; and

(ii) Comply with requirements of applicable laws and regulations, including this part;

(3) Assign in writing the authorities and responsibilities for record retention activities for employees, including line managers and corporate management;

(4) Include policies and procedures concerning record holds, consistent with §1235.5, and, as appropriate, integrate them with policies and procedures throughout the organization;

(5) Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, operational, and business requirements;

(6) Include appropriate security and internal controls to protect records from unauthorized access and data alteration;

(7) Provide for appropriate back-up and recovery of electronic records to ensure the same accuracy as the primary records;

(8) Provide for a periodic testing of the ability to access records; and

(9) Provide for the proper disposition of records.

(b) Minimum storage requirements for electronic records. Electronic records, preferably searchable, must be maintained on immutable, non-rewritable storage in a manner that provides for both ready access by any person who is entitled to access the records, including staff of FHFA, and accurate reproduction for later reference by transmission, printing or other means.

(c) Communication and training—(1) The record retention program established and maintained by each regulated entity and the Office of Finance under §1235.3 shall provide for periodic training and communication throughout the organization.

(2) The record retention program shall:

(i) Provide for communication throughout the organization on record retention policies, procedures, and record retention schedule updates; and

(ii) Provide for training of and notice to all employees on a periodic basis on their record retention responsibilities, including instruction regarding penalties provided by law for the unlawful removal or destruction of records. The record retention program also shall provide for training for the agents or independent contractors of a regulated entity or the Office of Finance, as appropriate, consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance.

§ 1235.5 Record hold.

(a) Notification by FHFA. In the event that FHFA is requiring a record hold, FHFA shall notify the chief executive officer of the regulated entity or the Office of Finance. Regulated entities and the Office of Finance must have a written policy for handling notice of a record hold.

(b) Notification by a regulated entity or the Office of Finance. The record retention program of a regulated entity and the Office of Finance shall—

(1) Address how employees and, as appropriate, how agents or independent contractors consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance, will receive prompt notification of a record hold;

(2) Designate an individual to communicate specific requirements and instructions, including, when necessary, the instruction to cease immediately any otherwise permissible destruction of records; and
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(3) Provide that any employee and, as appropriate, any agent or independent contractor consistent with his or her respective role and responsibility to the regulated entity or Office of Finance, who has received notice of a potential investigation, enforcement proceeding, or litigation by FHFA involving the regulated entity or the Office of Finance or an employee, or otherwise has actual knowledge that an issue is subject to such an investigation, enforcement proceeding or litigation, shall notify immediately the legal department or the individual providing legal services as well as senior management of the regulated entity or the Office of Finance and shall retain any records that may be relevant in any way to such investigation, enforcement proceeding, or litigation.

(c) Method of record retention during a record hold. The record retention program of each regulated entity and the Office of Finance shall address the method by which the regulated entity or the Office of Finance will retain records during a record hold. Specifically, the program shall describe the method for the continued preservation of electronic records, including e-mail, and, as applicable, the conversion of records from paper to electronic form as well as any alternative storage method.

(d) Access to and retrieval of records during a record hold. The record retention program of each regulated entity or the Office of Finance shall ensure access to and retrieval of records by the regulated entity and the Office of Finance, and access, upon request, by FHFA, during a record hold. Such access shall be by reasonable means, consistent with the nature and availability of the records and existing information technology.

§ 1235.6 Access to records.  

Each regulated entity and the Office of Finance shall make its records available promptly upon request by FHFA, at a location and in a form and manner acceptable to FHFA.

§ 1235.7 Supervisory action.  

(a) Supervisory action. Failure by a regulated entity or the Office of Finance to comply with this part may subject the regulated entity or the Office of Finance or the board members, officers, or employees thereof to supervisory action by FHFA under the Safety and Soundness Act, including but not limited to cease-and-desist proceedings, temporary cease-and-desist proceedings, and civil money penalties.

(b) No limitation of authority. This part does not limit or restrict the authority of FHFA to act under its safety and soundness mandate, in accordance with the Safety and Soundness Act. Such authority includes, but is not limited to, conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules, and regulations.
§ 1236.3  Prudential standards as guidelines.

(a) The Standards constitute the prudential management and operations standards required by 12 U.S.C. 4513b.

(b) The Standards have been adopted as guidelines, as authorized by 12 U.S.C. 4513b(a), and the Director may modify, revoke, or add to the Standards, or any one or more of them, at any time by order or notice.

(c) In the case of a direct conflict between a Standard and an FHFA regulation, when it is not possible to comply with both the Standard and the FHFA regulation, the regulation shall control.

(d) Failure to meet any Standard may constitute an unsafe and unsound practice for purposes of the enforcement provisions of 12 U.S.C. chapter 46, subchapter III.

§ 1236.4  Failure to meet a standard; corrective plans.

(a) Determination. FHFA may, based upon an examination, inspection or any other information, determine that a regulated entity has failed to meet one or more of the Standards.

(b) Submission of corrective plan. If FHFA determines that a regulated entity has failed to meet any Standard, FHFA may require the entity to submit a corrective plan, in which case FHFA shall, by written notice, inform the regulated entity of that determination and the requirement to submit a corrective plan.

(c) Corrective plans—(1) Contents of plan. A corrective plan shall describe the actions the regulated entity will take to correct its failure to meet any one or more of the Standards, and the time within which each action will be taken.

(2) Filing deadline—(i) In general. A regulated entity must file a written corrective plan with FHFA within thirty (30) calendar days of being notified by FHFA of its failure to meet a Standard and need to file a corrective plan, unless FHFA notifies the regulated entity in writing that the plan must be filed within a different time period.

(ii) Other plans. If a regulated entity must file a capital restoration plan submitted pursuant to 12 U.S.C. 4622, it may submit the corrective plan required under this section as part of the capital restoration plan, subject to the deadline in paragraph (c)(2)(i) of this section. If a regulated entity currently is operating under a cease-and-desist order entered into pursuant to 12 U.S.C. 4631 or 4632, or a formal or informal agreement, or must file a response to a report of examination or report of inspection, it may, with the permission of FHFA, submit the corrective plan required under this section as part of the regulated entity’s compliance with that order, agreement or response, subject to the deadline in paragraph (c)(2)(i) of this section, but the corrective plan would not become a part of the order, agreement, or response.

(d) Amendment of corrective plan. A regulated entity that is operating in accordance with an approved corrective plan may submit a written request.
§ 1236.5 Failure to submit a corrective plan; noncompliance.

(a) Remedies. If a regulated entity fails to submit an acceptable corrective plan under §1236.4(b), or fails in any material respect to implement or otherwise comply with an approved corrective plan, FHFA shall order the regulated entity to correct that deficiency, and may:

(1) Prohibit the regulated entity from increasing its average total assets, as defined in 12 U.S.C. 4516(b)(4), for any calendar quarter over its average total assets for the preceding calendar quarter, or may otherwise restrict the rate at which the average total assets of the regulated entity may increase from one calendar quarter to another;

(2) Prohibit the regulated entity from paying dividends;

(3) Prohibit the regulated entity from redeeming or repurchasing capital stock;

(4) Require the regulated entity to maintain or increase its level of retained earnings;

(5) Require an Enterprise to increase its ratio of core capital to assets, or require a Bank to increase its ratio of total capital, as defined in 12 U.S.C. 1426(a)(5), to assets; or

(6) Require the regulated entity to take any other action that the Director determines will better carry out the purposes of the statute by bringing the regulated entity into conformance with the Standards.

(b) Extraordinary growth. If a regulated entity that has failed to submit an acceptable corrective plan or has failed in any material respect to implement or otherwise comply with an approved corrective plan, also has experienced extraordinary growth, FHFA shall impose at least one of the sanctions listed in paragraph (a) of this section, consistently with the requirements of 12 U.S.C. 4513(b)(3).

(c) Orders—(1) Notice. Except as provided in paragraph (c)(4) of this section, FHFA will notify a regulated entity in writing of its intent to issue an order requiring the regulated entity to correct its failure to submit or its failure in any material respect to implement or otherwise comply with an approved corrective plan. Any such notice will include:

(i) A statement that the regulated entity has failed to submit a corrective plan under §1236.4, or has not implemented or otherwise has not complied in any material respect with an approved plan;

(ii) A description of any sanctions that FHFA intends to impose and, in the case of the mandatory sanctions required by 12 U.S.C. 4513(b)(3), a statement that FHFA believes that the regulated entity has experienced extraordinary growth; and

(iii) The proposed date when any sanctions would become effective or the proposed date for completion of any required actions.

(2) Response to notice. A regulated entity may file a written response to a notice of intent to issue an order, which must be delivered to FHFA within fourteen (14) calendar days of the date of the notice, unless FHFA determines that a different time period is appropriate in light of the safety and soundness of the regulated entity or other relevant circumstances. The response should include:

(i) An explanation why the regulated entity believes that the action proposed by FHFA is not an appropriate exercise of discretion;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation or other evidence in support of the position of the regulated entity regarding the proposed order.
(3) Failure to file response. A regulated entity’s failure to file a written response within the specified time period will constitute a waiver of the opportunity to respond and will constitute consent to issuance of the order.

(4) Immediate issuance of final order. FHFA may issue an order requiring a regulated entity immediately to take actions to correct a Standards deficiency or to take or refrain from taking other actions pursuant to paragraph (a) of this section. Within fourteen (14) calendar days of the issuance of an order under this paragraph, or other time period specified by FHFA, a regulated entity may submit a written appeal of the order to FHFA. FHFA will respond in writing to a timely filed appeal within sixty (60) days after receiving the appeal. During this period, the order will remain in effect unless FHFA stays the effectiveness of the order.

(d) Request for modification or rescission of order. A regulated entity subject to an order under this paragraph, or other time period specified by FHFA, may submit a written request to FHFA for an amendment to the order to reflect a change in circumstance. Unless otherwise ordered by FHFA, the order shall remain in effect while such a request is pending before FHFA.

(e) Agency review and determination. FHFA will respond in writing within thirty (30) days after receiving a response or amendment request, unless FHFA notifies the regulated entity in writing that it will respond within a different time period. After considering a regulated entity’s response or amendment request, FHFA may:

(1) Issue the order as proposed or in modified form;
(2) Determine not to issue the order and instead issue a different order; or
(3) Seek additional information or clarification of the response from the regulated entity, or any other relevant source.

APPENDIX TO PART 1236—PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS

The following provisions constitute the prudential management and operations standards established pursuant to 12 U.S.C. 4513b(a).

GENERAL RESPONSIBILITIES OF THE BOARD OF DIRECTORS AND SENIOR MANAGEMENT

The following provisions address the general responsibilities of the boards of directors and senior management of the regulated entities as they relate to the matters addressed by each of the Standards. The descriptions are not a comprehensive listing of the responsibilities of either the boards or senior management, each of whom have additional duties and responsibilities to those described in these Standards.

Responsibilities of the Board of Directors

1. With respect to the subject matter addressed by each Standard, the board of directors is responsible for adopting business strategies and policies that are appropriate for the particular subject matter. The board should review all such strategies and policies periodically. It should review and approve all major strategies and policies at least annually and make any revisions that are necessary to ensure that such strategies and policies remain consistent with the entity’s overall business plan.

2. The board of directors is responsible for overseeing management of the regulated entity, which includes ensuring that management includes personnel who are appropriately trained and competent to oversee the operation of the regulated entity as it relates to the functions and requirements addressed by each Standard, and that management implements the policies set forth by the board.

3. The board of directors is responsible for remaining informed about the operations and condition of the regulated entity, including operating consistently with the Standards, and senior management’s implementation of the strategies and policies established by the board of directors.

4. The board of directors must remain sufficiently informed about the nature and level of the regulated entity’s overall risk exposures, including market, credit, and counterparty risk, so that it can understand the possible short- and long-term effects of those exposures on the financial health of the regulated entity, including the possible short- and long-term consequences to earnings, liquidity, and economic value. The board of directors should establish the regulated entity’s risk tolerances and should provide management with clear guidance regarding the level of acceptable risks; review the regulated entity’s entire market risk management framework, including policies and entity-wide risk limits at least annually; oversee the adequacy of the actions taken by senior management to identify, measure, manage, and control the regulated entity’s risk exposures; and ensure that management
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takes appropriate corrective measures whenever market risk limit violations or breaches occur.

Responsibilities of Senior Management

5. With respect to the subject matter addressed by each Standard, senior management is responsible for developing the policies, procedures and practices that are necessary to implement the business strategies and policies adopted by the board of directors. Senior management should ensure that such items are clearly written, sufficiently detailed, and are followed by all personnel. Senior management also should ensure that the regulated entity has personnel who are appropriately trained and competent, approve and appropriately trained and competent, approve and appropriate policies, ensure personnel are appropriately trained and competent, approve and appropriate policies, ensure personnel are appropriately trained and competent. The organizational structure should clearly assign responsibility, authority, and reporting relationships.

Responsibilities of the Board of Directors and Senior Management

3. Regarding internal controls and information systems, both the board of directors and senior management should promote high ethical standards, create a culture that emphasizes the importance of this function, and promptly address any issues in need of remediation.

Framework

4. The regulated entity should have an adequate and effective system of internal controls, which should include a board approved organizational structure that clearly assigns responsibilities, authority, and reporting relationships, and establishes an appropriate segregation of duties that ensures that personnel are not assigned conflicting responsibilities.

5. The regulated entity should establish appropriate internal control policies and procedures, including operating consistently with each of the Standards. Senior management should provide the board of directors with periodic reports relating to the regulated entity’s condition and performance, including the subject matter addressed by each of the Standards, that are sufficiently detailed to allow the board of directors to remain fully informed about the business of the regulated entity.

6. Senior management should review and discuss with the board of directors information regarding the regulated entity’s condition and performance, including the subject matter addressed by each of the Standards, that are sufficiently detailed to allow the board of directors to remain fully informed about the business of the regulated entity. Senior management should regularly review and discuss with the board of directors information regarding the regulated entity’s condition and performance, including the subject matter addressed by each of the Standards, that are sufficiently detailed to allow the board of directors to remain fully informed about the business of the regulated entity.

7. Senior management should provide the board of directors with periodic reports relating to the regulated entity’s condition and performance, including the subject matter addressed by each of the Standards, that are sufficiently detailed to allow the board of directors to remain fully informed about the business of the regulated entity.

8. Senior management should regularly review and discuss with the board of directors information regarding the regulated entity’s condition and performance, including the subject matter addressed by each of the Standards, that are sufficiently detailed to allow the board of directors to remain fully informed about the business of the regulated entity. Senior management should regularly review and discuss with the board of directors information regarding the regulated entity’s condition and performance, including the subject matter addressed by each of the Standards, that are sufficiently detailed to allow the board of directors to remain fully informed about the business of the regulated entity.

9. The board of directors and senior management should conduct themselves in such a manner as to promote high ethical standards and a culture of compliance throughout the organization.

10. The board of directors and senior management should conduct themselves in such a manner as to promote high ethical standards and a culture of compliance throughout the organization.

Responsibilities of the Board of Directors

1. Regarding internal controls and information systems, the board of directors of each regulated entity should adopt appropriate policies, ensure personnel are appropriately trained and competent, approve and periodically review overall business strategies, approve the organizational structure, and assess the adequacy of senior management’s oversight of this function.

Risk Recognition and Assessment

8. A regulated entity should have an effective risk assessment process that ensures that management recognizes and continually assesses all material risks, including credit risk, market risk, interest rate risk, liquidity risk, and operational risk.

Control Activities and Segregation of Duties

9. A regulated entity should have an effective internal control system that defines control activities at every business level.

10. A regulated entity’s control activities should include:
a. Board of directors and senior management reviews of progress toward goals and objectives;  
b. Appropriate activity controls for each business unit;  
c. Physical controls to protect property and other assets and limit access to property and systems;  
d. Procedures for monitoring compliance with exposure limits and follow-up on non-compliance;  
e. A system of approvals and authorizations for transactions over certain limits; and  
f. A system for verification and reconciliation of transactions.

Information and Communication

11. A regulated entity should have information systems that provide relevant, accurate and timely information and data.
12. A regulated entity should have secure information systems that are supported by adequate contingency arrangements.
13. A regulated entity should have effective channels of communication to ensure that all personnel understand and adhere to policies and procedures affecting their duties and responsibilities.

Monitoring Activities and Correcting Deficiencies

14. A regulated entity should monitor the overall effectiveness of its internal controls and key risks on an ongoing basis and ensure that business units and internal and external audit conduct periodic evaluations.
15. Internal control deficiencies should be reported to senior management and the board of directors on a timely basis and addressed promptly.

Applicable Laws, Regulations, and Policies

16. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing internal controls and information systems.

STANDARD 2—INDEPENDENCE AND ADEQUACY OF INTERNAL AUDIT SYSTEMS

Audit Committee

1. A regulated entity’s board of directors should have an audit committee that exercises proper oversight and adopts appropriate policies and procedures designed to ensure the independence of the internal audit function. The audit committee should ensure that the internal audit department includes personnel who are appropriately trained and competent to oversee the internal audit function.
2. The board of directors should review and approve the audit committee charter at least every three years.
3. The audit committee of the board of directors is responsible for monitoring and evaluating the effectiveness of the regulated entity’s internal audit function.
4. Issues reported by the internal audit department to the audit committee should be promptly addressed and satisfactorily resolved.

Internal Audit Function

5. A regulated entity should have an internal audit function that provides for adequate testing of the system of internal controls.
6. A regulated entity should have an independent and objective internal audit department that reports directly to the audit committee of the board of directors.
7. A regulated entity’s internal audit department should be adequately staffed with properly trained and competent personnel.
8. The internal audit department should conduct risk-based audits.
9. The internal audit department should conduct adequate testing and review of internal control and information systems.
10. The internal audit department should determine whether violations, findings, weaknesses and other issues reported by regulators, external auditors, and others have been promptly addressed.

Applicable Laws, Regulations, and Policies

11. A regulated entity should comply with applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the independence and adequacy of internal audit systems.

STANDARD 3—MANAGEMENT OF MARKET RISK EXPOSURE

Responsibilities of the Board of Directors

1. Regarding the overall management of market risk exposure, the board of directors should remain sufficiently informed about the nature and level of the regulated entity’s market risk exposures. At least annually, the board should review the entire market risk framework, including policies and risk limits, and provide an assessment of compliance.
2. Regarding the policies, practices and procedures surrounding the management of market risk, the board of directors should approve all major strategies and policies relating to the management of market risk, ensure all major strategies and policies are consistent with the overall business plan, establish and communicate a market risk tolerance, and ensure appropriate corrective measures are taken when market risk limit violations or breaches occur.
3. The board, or a board appointed committee, should oversee the adequacy of actions taken by senior management to identify, measure, manage, and control market risk.

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risk exposures, ensure market risk policies establish lines of authority and responsibility, and review risk exposures on a periodic basis.

**Responsibilities of Senior Management**

4. Regarding the overall management of market risk exposure, senior management should provide sufficient and timely information to the board of directors, ensure personnel are appropriately trained and competent, ensure adequate systems and resources are available to manage and control market risk, report any breaches to the board of directors (or the appropriate board committee), and take appropriate remedial action.

5. Regarding the policies, practices, and procedures surrounding market risk exposure, senior management should ensure market risk policies and procedures are clearly written, sufficiently detailed, and followed. Approved policies and procedures should include clear market risk limits and lines of authority for managing market risk.

**Market Risk Strategy**

6. A regulated entity should have a clearly defined and well-documented strategy for managing market risk, which must be consistent with its overall business plan, must enable the regulated entity to identify, manage, monitor, and control the regulated entity’s risk exposures on a business unit and an enterprise-wide basis, and must ensure that the lines of authority and responsibility for managing market risk and monitoring market risk limits are clearly identified. The strategy should specify a target account, or target accounts, for managing market risk (e.g., specify whether the objective is to control risk to earnings, net portfolio value, or some other target, or some combination of targets), and, if a market risk limit is breached, should require that the breach be reported to the board of directors, or the appropriate board committee, and that appropriate remedial action, including any ordered by the board of directors, should be taken.

7. Management should ensure that the board of directors is made aware of the advantages and disadvantages of the regulated entity’s chosen market risk management strategy, as well as those of alternative strategies, so that the board of directors can make an informed judgment about the relative efficacy of the different strategies.

8. A Bank’s strategy for managing market risk should take into account the importance of maintaining the market value of equity of member stock commensurate with the par value of that stock so that the Bank is able to redeem and repurchase member stock at par value.

9. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance, (e.g., advisory bulletins) governing the independence and adequacy of the management of market risk exposure.

**STANDARD 4—MANAGEMENT OF MARKET RISK—MEASUREMENT SYSTEMS, RISK LIMITS, STRESS TESTING, AND MONITORING AND REPORTING**

**Risk Measurement Systems**

1. A regulated entity should have a risk measurement system (a model or models) that capture(s) all material sources of market risk and provide(s) meaningful and timely measures of the regulated entity’s risk exposures, as well as personnel who are appropriately trained and competent to operate and oversee the risk measurement system.

2. The risk measurement system should be capable of estimating the effect of changes in interest rates and other key risk factors on the regulated entity’s earnings and market value of equity over a range of scenarios.

3. The measurement system should be capable of valuing all financial assets and liabilities in the regulated entity’s portfolio.

4. The measurement system should address all material sources of market risk including repricing risk, yield curve risk, basis risk, and options risk.

5. Management should ensure the integrity and timeliness of the data inputs used to measure the regulated entity’s market risk exposures, and should ensure that assumptions and parameters are reasonable and properly documented.

6. The measurement system’s methodologies, assumptions, and parameters should be thoroughly documented, understood by management, and reviewed on a regular basis.

7. A regulated entity’s market risk model should be upgraded periodically to incorporate advances in risk modeling technology.

8. A regulated entity should have a documented approval process for model changes that requires model changes to be authorized by a party independent of the party making the change.

9. A regulated entity should ensure that its models are independently validated on a regular basis.

**Risk Limits**

10. Risk limits should be consistent with the regulated entity’s strategy for managing interest rate risk and should take into account the financial condition of the regulated entity, including its capital position.

11. Risk limits should address the potential impact of changes in market interest rates on net interest income, net income, and the regulated entity’s market value of equity.
Stress Testing

12. A regulated entity should conduct stress tests on a regular basis for a variety of institution-specific and market-wide stress scenarios to identify potential vulnerabilities and to ensure that exposures are consistent with the regulated entity's tolerance for risk.

13. A regulated entity should use stress test outcomes to adjust its market risk management strategies, policies, and positions and to develop effective contingency plans.

14. Special consideration should be given to ensuring that complex financial instruments, including instruments with complex option features, are properly valued under stress scenarios and that the risks associated with options exposures are properly understood.

15. Management should ensure that the regulated entity's board of directors or a committee thereof considers the results of stress tests when establishing and reviewing its strategies, policies, and limits for managing and controlling interest rate risk.

16. The board of directors and senior management should review periodically the design of stress tests to ensure that they encompass the kinds of market conditions under which the regulated entity's positions and strategies would be most vulnerable.

Monitoring and Reporting

17. A regulated entity should have an adequate management information system for reporting market risk exposures.

18. The board of directors, senior management, and the appropriate line managers should be provided with regular, accurate, informative, and timely market risk reports.

Applicable Laws, Regulations, and Policies

19. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the management of market risk.

STANDARD 5—ADEQUACY AND MAINTENANCE OF LIQUIDITY AND RESERVES

Responsibilities of the Board of Directors

1. Regarding the adequacy and maintenance of liquidity and reserves, the board of directors should review (at least annually) all major strategies and policies governing this area, approve appropriate revisions to such strategies and policies, and ensure senior management are appropriately trained to effectively manage liquidity.

Responsibilities of Senior Management

2. Regarding the adequacy and maintenance of liquidity and reserves, senior management should develop strategies, policies, and practices to manage liquidity risk, ensure personnel are appropriately trained and competent, and provide the board of directors with periodic reports on the regulated entity’s liquidity position.

Policies, Practices, and Procedures

3. A regulated entity should establish a liquidity management framework that ensures it maintains sufficient liquidity to withstand a range of stressful events.

4. A regulated entity should articulate a liquidity risk tolerance that is appropriate for its business strategy and its mission goals and objectives.

5. A regulated entity should have a sound process for identifying, measuring, monitoring, controlling, and reporting its liquidity position and its liquidity risk exposures.

6. A regulated entity should establish a funding strategy that provides effective diversification in the sources and tenor of funding.

7. A regulated entity should conduct stress tests on a regular basis for a variety of institution-specific and market-wide stress scenarios to identify sources of potential liquidity strain and to ensure that current exposures remain in accordance with each regulated entity’s established liquidity risk tolerance.

8. A regulated entity should use stress test outcomes to adjust its liquidity management strategies, policies, and positions and to develop effective contingency plans.

9. A regulated entity should have a formal contingency funding plan that clearly sets out the strategies for addressing liquidity shortfalls in emergencies. Where practical, contingent funding sources should be tested or drawn on periodically to assess their reliability and operational soundness.

10. A regulated entity should maintain adequate reserves of liquid assets, including adequate reserves of unencumbered, marketable securities that can be liquidated to meet unexpected needs.

Applicable Laws, Regulations, and Policies

11. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the adequacy and maintenance of liquidity and reserves.

STANDARD 6—MANAGEMENT OF ASSET AND INVESTMENT PORTFOLIO GROWTH

Responsibilities of the Board of Directors and Senior Management

1. Regarding the management of asset and investment portfolio growth, the board of directors is responsible for overseeing the management of growth in these areas, ensuring senior management are appropriately trained and competent, establishing policies governing the regulated entity’s assets and investment growth, with prudential limits
on the growth of mortgages and mortgage-backed securities, and reviewing policies at least annually.

2. Regarding the management of asset and investment portfolio growth, senior management should adhere to board-approved policies governing growth in these areas, and ensure personnel are appropriately trained and competent to manage the growth.

Risk Measurement, Monitoring, and Control

3. A regulated entity should manage its asset growth and investment growth in a prudent manner that is consistent with the regulated entity’s business strategy, board-approved policies, risk tolerances, and safe and sound operations, and should establish prudential limits on the growth of its portfolios of mortgage loans and mortgage-backed securities.

4. A regulated entity should manage asset growth and investment growth in a way that is compatible with mission goals and objectives.

5. A regulated entity should manage investments and acquisition of assets in a way that is compatible with mission goals and objectives.

6. A regulated entity should manage investments and acquisitions of assets in a way that complies with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins).

STANDARD 7—INVESTMENTS AND ACQUISITIONS OF ASSETS

Responsibilities of the Board of Directors and Senior Management

1. The board of directors is responsible for overseeing the regulated entity’s investments and acquisition of other assets, ensuring senior management are appropriately trained and competent, and establishing, approving and periodically reviewing policies and procedures governing investments and acquisitions of other assets.

Policies, Practices, and Procedures

2. A regulated entity should have a board-approved investment policy that establishes clear and explicit guidelines that are appropriate to the regulated entity’s mission and objectives. The investment policy should establish the regulated entity’s investment objectives, risk tolerances, investment constraints, and policies and procedures for selecting investments.

3. A regulated entity should have a board-approved policy governing acquisitions of major categories of assets other than investments. The policy should establish clear and explicit guidelines for asset acquisitions that are appropriate to the regulated entity’s mission and objectives.

4. A regulated entity should manage investments and acquisitions of assets prudently and in a manner that is consistent with mission goals and objectives.

5. Each Bank’s investment policies and acquisition of assets should take into account the importance of maintaining the market value of member stock commensurate with the par value of that stock so that the Bank is able to redeem and repurchase member stock at par value at all times.

6. A regulated entity should manage investments and acquisitions of assets in a way that complies with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins).

STANDARD 8—OVERALL RISK MANAGEMENT PROCESSES

Responsibilities of the Board of Directors

1. Regarding overall risk management processes, the board of directors is responsible for overseeing the process, ensuring senior management are appropriately trained and competent, ensuring processes are in place to identify, manage, monitor and control risk exposures (this function may be delegated to a board appointed committee), approving all major risk limits, and ensuring incentive compensation measures for senior management capture a full range of risks.

Responsibilities of the Board and Senior Management

2. Regarding overall risk management processes, the board of directors and senior management should establish and sustain a culture that promotes effective risk management. This culture includes timely, accurate and informative risk reports, alignment of the regulated entity’s overall risk profile with its mission objectives, and the annual review of comprehensive self-assessments of material risks.

Independent Risk Management Function

3. A regulated entity should have an independent risk management function, or unit, with responsibility for risk measurement and risk monitoring, including monitoring and enforcement of risk limits.

4. The chief risk officer should head the risk management function.

5. The chief risk officer should report directly to the chief executive officer and the risk committee of the board of directors.

6. The risk management function should have adequate resources, including a well-trained and capable staff.

Risk Measurement, Monitoring, and Control

7. A regulated entity should measure, monitor, and control its overall risk exposures, reviewing market, credit, liquidity, and operational risk exposures on both a business unit (or business segment) and enterprise-wide basis.
8. A regulated entity should have the risk management systems to generate, at an appropriate frequency, the information needed to manage risk. Such systems should include systems for market, credit, operational, and liquidity risk analysis, asset and liability management, regulatory reporting, and performance measurement.

9. A regulated entity should have a comprehensive set of risk limits and monitoring procedures to ensure that risk exposures remain within established risk limits, and a mechanism for reporting violations and breaches of risk limits to senior management and the board of directors.

10. A regulated entity should ensure that it has sufficient controls around risk measurement models to ensure the completeness, accuracy, and timeliness of risk information.

11. A regulated entity should have adequate and well-tested disaster recovery and business resumption plans for all major systems and have remote facilities to limit the impact of disruptive events.

Applicable Laws, Regulations, and Policies

12. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the management of risk.

STANDARD 9—MANAGEMENT OF CREDIT AND COUNTERPARTY RISK

Responsibilities of the Board of Directors and Senior Management

1. Regarding the management of credit and counterparty risk, the board of directors and senior management are responsible for ensuring that the regulated entity has appropriate policies, procedures, and systems that cover all aspects of credit administration, including credit pricing, underwriting, credit limits, collateral standards, and collateral valuation procedures. This should also include derivatives and the use of clearing houses. They are also responsible for ensuring personnel are appropriately trained, competent, and equipped with the necessary tools, procedures and systems to assess risk.

2. Senior management should provide the board of directors with regular briefings and reports on credit exposures.

Policies, Procedures, Controls, and Systems

3. A regulated entity should have policies that limit concentrations of credit risk and systems to identify concentrations of credit risk.

4. A regulated entity should establish prudential limits to restrict exposures to a single counterparty that are appropriate to its business model.

5. A regulated entity should establish prudential limits to restrict exposures to groups of related counterparties that are appropriate to its business model.

6. A regulated entity should have policies, procedures, and systems for evaluating credit risk that will enable it to make informed credit decisions.

7. A regulated entity should have policies, procedures, and systems for evaluating credit risk that will enable it to ensure that claims are legally enforceable.

8. A regulated entity should have policies and procedures for addressing problem credits.

9. A regulated entity should have an ongoing credit review program that includes stress testing and scenario analysis.

Applicable Laws, Regulations, and Policies

10. A regulated entity should manage credit and counterparty risk in a way that complies with applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins).

STANDARD 10—MAINTENANCE OF ADEQUATE RECORDS

1. A regulated entity should maintain financial records in compliance with Generally Accepted Accounting Principles (GAAP), FHFA guidelines, and applicable laws and regulations.

2. A regulated entity should ensure that assets are safeguarded and financial and operational information is timely and reliable.

3. A regulated entity should have a records retention program consistent with laws and corporate policies, including accounting policies, as well as personnel that are appropriately trained and competent to oversee and implement the records management plan.

4. A regulated entity, with oversight from the board of directors, should conduct a review and approval of the records retention program and records retention schedule for all types of records at least once every two years.

5. A regulated entity should ensure that reporting errors are detected and corrected in a timely manner.

6. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the maintenance of adequate records.

[77 FR 33959, June 8, 2012, as amended at 80 FR 72336, Nov. 19, 2015]

PART 1237—CONSERVATORSHIP AND RECEIVERSHIP

Sec.
1237.1 Purpose and applicability.
1237.2 Definitions.
§ 1237.1 Purpose and applicability.

The provisions of this part shall apply to the appointment and operations of the Federal Housing Finance Agency (“Agency”) as conservator or receiver of a regulated entity. These provisions implement and supplement the procedures and process set forth in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, by the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289 for conduct of a conservatorship or receivership of such entity.

§ 1237.2 Definitions.

For the purposes of this part the following definitions shall apply:


Authorizing statutes mean—

(1) The Federal National Mortgage Association Charter Act,

(2) The Federal Home Loan Mortgage Corporation Act, and


Capital distribution has, with respect to a Bank, the definition stated in §1229.1 of this chapter, and with respect to an Enterprise, the definition stated in §1229.13 of this chapter.

Compensation means any payment of money or the provision of any other thing of current or potential value in connection with employment.

Conservator means the Agency as appointed by the Director as conservator for a regulated entity.

Default; in danger of default:

(1) Default means, with respect to a regulated entity, any official determination by the Director, pursuant to which a conservator or receiver is appointed for a regulated entity.

(2) In danger of default means, with respect to a regulated entity, the definition under section 1303(8)(B) of the Safety and Soundness Act or applicable FHFA regulations.

Entity-affiliated party means any party meeting the definition of an entity-affiliated party under section 1303(11) of the Safety and Soundness Act or applicable FHFA regulations.

Equity security of any person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests (however designated) in equity, ownership or profits of such person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

Executive officer means, with respect to an Enterprise, any person meeting the definition of executive officer under section 1303(12) of the Safety and Soundness Act and applicable FHFA regulations under that section, and, with respect to a Bank, an executive officer as defined in applicable FHFA regulations.

Golden parachute payment means, with respect to a regulated entity, the definition under 12 CFR part 1231 or other applicable FHFA regulations.

Limited-life regulated entity means an entity established by the Agency under...
section 1367(i) of the Safety and Soundness Act with respect to a Federal Home Loan Bank in default or in danger of default, or with respect to an Enterprise in default or in danger of default.

Receiver means the Agency as appointed by the Director to act as receiver for a regulated entity.

Securities litigation claim means 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 a regulated entity or for damages arising from the purchase, sale, or retention of such a security.

Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the regulated entity.

Subpart A—Powers

§ 1237.3 Powers of the Agency as conservator or receiver.

(a) Operation of the regulated entity.

The Agency, as it determines appropriate to its operations as either conservator or receiver, may:

(1) Take over the assets of and operate the regulated entity with all the powers of the shareholders (including the authority to vote shares of any and all classes of voting stock), the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

(2) Continue the missions of the regulated entity;

(3) Ensure that the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets;

(4) Ensure that each regulated entity operates in a safe and sound manner;

(5) Collect all obligations and money due the regulated entity;

(6) Perform all functions of the regulated entity in the name of the regulated entity that are consistent with the appointment as conservator or receiver;

(7) Preserve and conserve the assets and property of the regulated entity (including the exclusive authority to investigate and prosecute claims of any type on behalf of the regulated entity, or to delegate to management of the regulated entity the authority to investigate and prosecute claims); and

(8) Provide by contract for assistance in fulfilling any function, activity, action, or duty of the Agency as conservator or receiver.

(b) Agency as receiver. The Agency, as receiver, shall place the regulated entity in liquidation, employing the additional powers expressed in 12 U.S.C. 4617(b)(2)(E).

(c) Powers as conservator or receiver. The Agency, as conservator or receiver, shall have all powers and authorities specifically provided by section 1367 of the Safety and Soundness Act and paragraph (a) of this section, including incidental powers, which include the authority to suspend capital classifications under section 1364(e)(1) of the Safety and Soundness Act during the duration of the conservatorship or receivership of that regulated entity.

(d) Transfer or sale of assets and liabilities. The Agency may, as conservator or receiver, transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale. Exercise of this authority by the Agency as conservator will nullify any restraints on sales or transfers in any agreement not entered into by the Agency as conservator. Exercise of this authority by the Agency as receiver will nullify any restraints on sales or transfers in any agreement not entered into by the Agency as receiver.

§ 1237.4 Receivership following conservatorship; administrative expenses.

If a receivership immediately succeeds a conservatorship, the administrative expenses of the conservatorship
§ 1237.9 Priority of expenses and unsecured claims.

(a) General. The receiver will grant priority to unsecured claims against a regulated entity or the receiver for that regulated entity that are proven to the satisfaction of the receiver in the following order:

1. Administrative expenses of the receiver (or an immediately preceding conservator).
2. Any other general or senior liability of the regulated entity (that is not a liability described under paragraph (a)(3) or (a)(4) of this section).
3. Any obligation subordinated to general creditors (that is not an obligation described under paragraph (a)(4) of this section).
4. Any claim by current or former shareholders or members arising as a result of their current or former status as shareholders or members, including, without limitation, any securities litigation claim. Within this priority level, the receiver shall recognize the priorities of shareholder claims inter se, such as that preferred shareholder claims are prior to common shareholder claims. This subparagraph (a)(4) shall not apply to any claim by a current or former member of a Federal Home Loan Bank that arises from transactions or relationships distinct from the current or former member’s ownership, purchase, sale, or retention of an equity security of the Federal Home Loan Bank.

(b) Similarly situated creditors. All claimants that are similarly situated shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this section, if:

1. The Director determines that such action is necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and
2. All claimants that are similarly situated under paragraph (a) of this section receive not less than the
§ 1237.10

amount such claimants would have received if the receiver liquidated the assets and liabilities of the regulated entity in receivership and such action had not been taken.

(c) Priority determined at default. The receiver will determine priority based on a claim’s status at the time of default, such default having occurred at the time of entry into the receivership, or if a conservatorship immediately preceded the receivership, at the time of entry into the conservatorship provided the claim then existed.

Subpart C—Limited-Life Regulated Entities

§ 1237.10 Limited-life regulated entities.

(a) Status. The United States Government shall be considered a person for purposes of section 1367(i)(6)(C)(i) of the Safety and Soundness Act.

(b) Investment authority. The requirements of section 1367(i)(4) shall apply only to the liquidity portfolio of a limited-life regulated entity.

(c) Policies and procedures. The Agency may draft such policies and procedures with respect to limited-life regulated entities as it determines to be necessary and appropriate, including policies and procedures regarding the timing of the creation of limited-life regulated entities.

§ 1237.11 Authority of limited-life regulated entities to obtain credit.

(a) Ability to obtain credit. A limited-life regulated entity may obtain unsecured credit and issue unsecured debt.

(b) Inability to obtain credit. If a limited-life regulated entity is unable to obtain unsecured credit or issue unsecured debt, the Director may authorize the obtaining of credit or the issuance of debt by the limited-life regulated entity with priority over any and all of the obligations of the limited-life regulated entity, secured by a lien on property of the limited-life regulated entity that is not otherwise subject to a lien, or secured by a junior lien on property of the limited-life regulated entity that is subject to a lien.

(c) Limitations. The Director, after notice and a hearing, may authorize a limited-life regulated entity to obtain credit or issue debt that is secured by a senior or equal lien on property of the limited-life regulated entity that is already subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by an Enterprise) only if the limited-life regulated entity is unable to obtain such credit or issue such debt otherwise on commercially reasonable terms and there is adequate protection of the interest of the holder of the earlier lien on the property with respect to which such senior or equal lien is proposed to be granted.

(d) Adequate protection. The adequate protection referred to in paragraph (c) of this section may be provided by:

(1) Requiring the limited-life regulated entity to make a cash payment or periodic cash payments to the holder of the earlier lien, to the extent that there is likely to be a decrease in the value of such holder’s interest in the property subject to the lien;

(2) Providing to the holder of the earlier lien an additional or replacement lien to the extent that there is likely to be a decrease in the value of such holder’s interest in the property subject to the lien; or

(3) Granting the holder of the earlier lien other relief, other than entitling such holder to compensation allowable as an administrative expense under section 1367(c) of the Safety and Soundness Act, as will result in the realization by such holder of the equivalent of such holder’s interest in such property.

Subpart D—Other

§ 1237.12 Capital distributions while in conservatorship.

(a) Except as provided in paragraph (b) of this section, a regulated entity shall make no capital distribution while in conservatorship.

(b) The Director may authorize, or may delegate the authority to authorize, a capital distribution that would otherwise be prohibited by paragraph (a) of this section if he or she determines that such capital distribution:

(1) Will enhance the ability of the regulated entity to meet the risk-based capital level and the minimum capital level for the regulated entity;
Federal Housing Finance Agency

§ 1238.1 Authority and purpose.


(b) Purpose. (1) This part implements section 165(i)(2) of the Dodd-Frank Act, which requires all large financial companies that have total consolidated assets of more than $10 billion, and are regulated by a primary federal financial regulatory agency, to conduct annual stress tests. To ensure the safety and soundness of the regulated entities, the Director reserves and retains the discretion to apply this part to any regulated entity with less than $10 billion total consolidated assets in a particular year.

(2) This part establishes requirements that apply to each regulated entity’s performance of annual stress tests. The purpose of the annual stress test is to provide the regulated entities, FHFA, and the FRB with additional, forward-looking information that will help them to assess capital adequacy at the regulated entities under various scenarios; to review the regulated entities’ stress test results; and to increase public disclosure of the regulated entities’ capital condition by requiring broad dissemination of the stress test scenarios and results.

[78 FR 59222, Sept. 26, 2013, as amended at 81 FR 76295, Nov. 2, 2016]

§ 1238.2 Definitions.

For purposes of this part, the following definitions apply:

Planning horizon means the period of time over which the stress projections must extend. The planning horizon cannot be less than nine quarters.
Scenarios are sets of economic and financial conditions used in the regulated entities’ stress tests, including baseline, adverse, and severely adverse. Stress test is a process to assess the potential impact on a regulated entity of economic and financial conditions (“scenarios”) on the consolidated earnings, losses, and capital of the regulated entity over a set planning horizon, taking into account the current condition of the regulated entity and the regulated entity’s risks, exposures, strategies, and activities.

§ 1238.3 Annual stress test.

(a) In general. Each regulated entity:

(1) Shall complete an annual stress test of itself based on its data as of December 31 of the preceding calendar year;

(2) The stress test shall be conducted in accordance with this section and the methodologies and practices described in §1238.4 and in any supplemental guidance or Order.

(b) Scenarios provided by FHFA. In conducting its annual stress tests under this section, each regulated entity must use scenarios provided by FHFA, which shall be generally consistent with and comparable to those established by the FRB, that reflect a minimum of three sets of economic and financial conditions, including a baseline, adverse, and severely adverse scenario. Not later than 30 days after the FRB publishes its scenarios, FHFA will issue to all regulated entities a description of the baseline, adverse, and severely adverse scenarios that each regulated entity shall use to conduct its annual stress tests under this part.

§ 1238.4 Methodologies and practices.

(a) Potential impact. Except as noted in this subpart, in conducting a stress test under §1238.3, each regulated entity shall calculate how each of the following is affected during each quarter of the stress test planning horizon, for each scenario:

(1) Potential losses, pre-provision net revenues, allowance for loan losses, and future pro forma capital positions over the planning horizon; and

(2) Capital levels and capital ratios, including regulatory capital and net worth, each Bank’s leverage and permanent capital ratios, and any other capital ratios, specified by FHFA.

(b) Planning horizon. Each regulated entity must use a planning horizon of at least nine quarters over which the impact of specified scenarios would be assessed.

(c) Additional analytical techniques. If FHFA determines that the stress test methodologies and practices of a regulated entity are deficient, FHFA may determine that additional or alternative analytical techniques and exercises are appropriate for a regulated entity to use in identifying, measuring, and monitoring risks to the financial soundness of the regulated entity, and require a regulated entity to implement such techniques and exercises in order to fulfill the requirements of this part. In addition, FHFA will issue guidance annually to describe the baseline, adverse, and severely adverse scenarios, and methodologies to be used in conducting the annual stress test.

(d) Controls and oversight of stress testing processes. (1) The appropriate senior management of each regulated entity must ensure that the regulated entity establishes and maintains a system of controls, oversight, and documentation, including policies and procedures, designed to ensure that the stress testing processes used by the regulated entity are effective in meeting the requirements of this part. These policies and procedures must, at a minimum, describe the regulated entity’s testing practices and methodologies, validation and use of stress test results, and processes for updating the regulated entity’s stress testing practices consistent with relevant supervisory guidance;

(2) The board of directors, or a designated committee thereof, shall review and approve the policies and procedures established to comply with this part as frequently as economic conditions or the condition of the regulated entity warrants, but at least annually; and

(3) Senior management of the regulated entity and each member of the
§ 1238.5 Required report to FHFA and the FRB of stress test results and related information.

(a) Report required for stress tests. On or before May 20 of each year, the Enterprises must report the results of the stress tests required under §1238.3 to FHFA, and to the FRB, in accordance with paragraph (b) of this section; and on or before August 31 of each year, the Banks must report the results of the stress tests required under §1238.3 to FHFA, and to the FRB, in accordance with paragraph (b) of this section:

(b) Content of report for annual stress test. Each regulated entity must file a report in the manner and form established by FHFA.

(c) Confidential treatment of information submitted. Reports submitted to FHFA under this part are FHFA property and records (as defined in 12 CFR part 1202 of this chapter). The reports are and include non-public information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, FHFA in connection with the performance of the agency’s responsibilities regulating or supervising its regulated entities. Disclosure of any reports submitted to FHFA or the information contained in any such report is prohibited unless authorized by this part, legal obligation, or otherwise by the Director of FHFA.


§ 1238.6 Post-assessment actions by regulated entities.

Each regulated entity shall take the results of the stress test conducted under §1238.3 into account in making changes, as appropriate, to the regulated entity’s capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans for recovery and resolution; and to improve overall risk management. If a regulated entity is under FHFA conservatorship, any post-assessment actions shall require prior FHFA approval.

§ 1238.7 Publication of results by regulated entities.

(a) Public disclosure of results required for stress tests of regulated entities. The Enterprises must disclose publicly a summary of the stress test results for the severely adverse scenario not earlier than August 1 and not later than August 15 of each year. Each Bank must disclose publicly a summary of the stress test results for the severely adverse scenario not earlier than November 15 and not later than November 30 of each year. The summary may be published on the regulated entity’s Web site or in any other form that is reasonably accessible to the public;

(b) Information to be disclosed in the summary. The information disclosed by each regulated entity shall, at a minimum, include—

1. A description of the types of risks being included in the stress test;
2. A high-level description of the scenario provided by FHFA, including key variables (such as GDP, unemployment rate, housing prices, foreclosure rate, etc.);
3. A general description of the methodologies employed to estimate losses, pre-provision net revenue, allowance for loan losses, and changes in capital positions over the planning horizon;
4. A general description of the use of the required stress test as one element in a regulated entity’s overall capital planning and capital adequacy assessment. If a regulated entity is under FHFA conservatorship, this description shall be coordinated with FHFA;
5. Aggregate losses, pre-provision net revenue, allowance for loan losses, net income, net worth, and each Bank’s leverage and permanent capital ratios, pro forma capital levels and capital ratios (including regulatory and any other capital ratios specified by FHFA) over the planning horizon, under the scenario; and
6. Such other data fields, in such form (e.g., aggregated), as the Director may require.


§ 1238.8 Additional implementing action.

The Director may, in circumstances considered appropriate, require any
regulated entity not subject to this part to conduct stress testing hereunder; and from time to time, issue such guidance and orders as may be necessary to facilitate implementation of this part.

PART 1239—RESPONSIBILITIES OF BOARDS OF DIRECTORS, CORPORATE PRACTICES, AND CORPORATE GOVERNANCE

Subpart A—General

Sec.
1239.1 Purpose.
1239.2 Definitions.

Subpart B—Corporate Practices and Procedures Applicable to All Regulated Entities

1239.3 Law applicable to corporate governance and indemnification practices.
1239.4 Duties and responsibilities of directors.
1239.5 Board committees.

Subpart C—Other Requirements Applicable to All Regulated Entities

1239.10 Code of conduct and ethics.
1239.11 Risk management.
1239.12 Compliance program.
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Subpart D—Enterprise Specific Requirements

1239.20 Board of directors of the Enterprises.
1239.21 Compensation of Enterprise board members.

Subpart E—Bank Specific Requirements

1239.30 Bank member products policy.
1239.31 Strategic business plan.
1239.32 Audit committee.
1239.33 Dividends.

AUTHORITY: 12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), 4526, and 15 U.S.C. 78oo(b).

SOURCE: 80 FR 72336, Nov. 19, 2015, unless otherwise noted.

Subpart A—General

§ 1239.1 Purpose.

FHFA is responsible for supervising and ensuring the safety and soundness of the regulated entities. In furtherance of those responsibilities, this part sets forth minimum standards with respect to responsibilities of boards of directors, corporate practices, and corporate governance matters of the regulated entities.

§ 1239.2 Definitions.

As used in this part, (unless otherwise noted):

Board member means a member of the board of directors of a regulated entity.
Board of directors means the board of directors of a regulated entity.
Business risk means the risk of an adverse impact on a regulated entity’s profitability resulting from external factors as may occur in both the short and long run.
Community financial institution has the meaning set forth in §1263.1 of this chapter.
Compensation means any payment of money or the provision of any other thing of current or potential value in connection with employment or in connection with service as a director.
Employee means an individual, other than an executive officer, who works part-time, full-time, or temporarily for a regulated entity.
Executive officer means the chief executive officer, chief financial officer, chief operating officer, president, any executive vice president, any senior vice president, and any individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division, or function, or who reports directly to the chairperson, vice chairperson, chief operating officer, or chief executive officer or president of a regulated entity.
Immediate family member means a parent, sibling, spouse, child, dependent, or any relative sharing the same residence.
Internal auditor means the individual responsible for the internal audit function at a regulated entity.
Liquidity risk means the risk that a regulated entity will be unable to meet its financial obligations as they come due or meet the credit needs of its members and associates in a timely and cost-efficient manner.
Market risk means the risk that the market value, or estimated fair value if market value is not available, of a regulated entity’s portfolio will decline as a result of changes in interest rates, foreign exchange rates, or equity or commodity prices.

NYSE means the New York Stock Exchange.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people, or systems, or from external events (including legal risk but excluding strategic and reputational risk).

Risk appetite means the aggregate level and types of risk the board of directors and management are willing to assume to achieve the regulated entity’s strategic objectives and business plan, consistent with applicable capital, liquidity, and other regulatory requirements.

Significant deficiency means a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Subpart B—Corporate Practices and Procedures Applicable to All Regulated Entities

§ 1239.3 Law applicable to corporate governance and indemnification practices.

(a) General. The corporate governance practices and procedures of each regulated entity, and practices and procedures relating to indemnification (including advancement of expenses), shall comply with and be subject to the applicable authorizing statutes and other Federal law, rules, and regulations, and shall be consistent with the safe and sound operations of the regulated entities.

(b) Election and designation of body of law. (1) To the extent not inconsistent with paragraph (a) of this section, each regulated entity shall elect to follow the corporate governance and indemnification practices and procedures set forth in one of the following:
   (i) The law of the jurisdiction in which the principal office of the regulated entity is located;
with respect to the entity’s corporate
governance or indemnification prac-
tices or procedures.

§ 1239.4 Duties and responsibilities of
directors.

(a) Management of a regulated entity.
The management of each regulated en-
tity shall be by or under the direction
of its board of directors. While a board
of directors may delegate the execu-
tion of operational functions to officers
and employees of the regulated entity,
the ultimate responsibility of each en-
tity’s board of directors for that entity’s
oversight is non-delegable. The
board of directors of a regulated entity
is responsible for directing the conduct
and affairs of the entity in furtherance
of the safe and sound operation of the
entity and shall remain reasonably in-
formed of the condition, activities, and
operations of the entity.

(b) Duties of directors. Each director of
a regulated entity shall have the duty
to:

(1) Carry out his or her duties as di-
rector in good faith, in a manner such
director believes to be in the best in-
terests of the regulated entity, and
with such care, including reasonable
inquiry, as is required under the Re-
vised Model Business Corporation Act
or the other body of law that the enti-
ty’s board of directors has chosen to
follow for its corporate governance prac-
tices and procedures in accordance
with § 1239.3(b);

(2) For Bank directors, administer
the affairs of the regulated entity fair-
ly and impartially and without dis-
crimination in favor of or against any
member institution;

(3) At the time of election, or within
a reasonable time thereafter, have a
working familiarity with basic finance
and accounting practices, including the
ability to read and understand the reg-
ulated entity’s balance sheet and in-
come statement and to ask substantive
questions of management and the in-
ternal and external auditors;

(4) Direct the operations of the regu-
lated entity in conformity with the re-
quirements set forth in the authorizing
statutes, the Safety and Soundness
Act, and this chapter; and

(5) Adopt and maintain in effect at
all times bylaws governing the manner
in which the regulated entity admin-
isters its affairs. Such bylaws shall be
consistent with applicable laws and
regulations administered by FHFA,
and with the body of law designated for
the entity’s corporate governance prac-
tices and procedures in accordance
with § 1239.3(b).

(c) Director responsibilities. The re-
 sponsibilities of the board of directors
include having in place adequate poli-
cies to assure its oversight of, among
other matters, the following:

(1) The risk management and compen-
sation programs of the regulated
entity;

(2) The processes for providing accu-
rate financial reporting and other dis-
closures, and communications with
stockholders; and

(3) The responsiveness of executive
officers in providing accurate and
timely reports to FHFA and in address-
ing all supervisory concerns of FHFA
in a timely and appropriate manner.

(d) Authority regarding staff and out-
side consultants. (1) In carrying out its
duties and responsibilities under the
authorizing statutes, the Safety and
Soundness Act, and this chapter, each
regulated entity’s board of directors
and all committees thereof shall have
authority to retain staff and outside
counsel, independent accountants, or
other outside consultants at the ex-
 pense of the regulated entity.

(2) The board of directors and its
committees may require that staff of
the regulated entity that provides ser-
dices to the board or any committee
under paragraph (d)(1) of this section
report directly to the board or such
committee, as appropriate.

§ 1239.5 Board committees.

(a) General. The board of directors
may rely, in directing a regulated enti-
ty, on reports from committees of the
board of directors, provided, however,
that no committee of the board of di-
rectors shall have the authority of the
board of directors to amend the bylaws
and no committee shall operate to re-
lieve the board of directors or any
board member of a responsibility im-
posed by applicable law, rule, or regu-
lation.

(b) Required committees. The board of
directors of each regulated entity shall
have committees, however styled, that
dress each of the following areas of
responsibility: Risk management;
audit; compensation; and corporate
governance (in the case of the Banks,
including the nomination of inde-
pendent board of director candidates,
and, in the case of the Enterprises,
including the nomination of all board of
director candidates). The risk manage-
ment committee and the audit com-
mittee shall not be combined with any
other committees. The board of direc-
tors may establish any other commit-
tees that it deems necessary or useful
to carrying out its responsibilities,
subject to the provisions of this sec-
tion. In the case of the Enterprises,
board committees shall comply with
the charter, independence, composition,
expertise, duties, responsibilities,
and other requirements set forth under
rules issued by the NYSE, and the
audit committees shall also comply
with the requirements set forth under
section 301 of the Sarbanes-Oxley Act
of 2002, Public Law 107–204.

(c) Charter. The board of directors
shall adopt a formal written charter
for each committee that specifies the
scope of a committee’s powers and re-
sponsibilities, as well as the commit-
tee’s structure, processes, and member-
ship requirements.

(d) Frequency of meetings. Each com-
mittee of the board of directors shall
meet regularly and with sufficient fre-
quency to carry out its obligations and
duties under applicable laws, rules, reg-
ulations, and guidelines. Committees
that are structured to meet only on an
as-needed basis shall meet in the man-
er specified by their charter. All such
committees shall also meet with suffi-
cient timeliness as necessary in light
of relevant conditions and cir-
cumstances to fulfill their obligations
and duties.

Subpart C—Other Requirements
Applicable to All Regulated
Entities

§ 1239.10 Code of conduct and ethics.

(a) General. A regulated entity shall
establish and administer a written code
of conduct and ethics that is reason-
able designed to assure that its direc-
tors, officers, and employees discharge
their duties and responsibilities in an
objective and impartial manner that
promotes honest and ethical conduct,
compliance with applicable laws, rules,
and regulations, accountability for ad-
herence to the code, and prompt inter-
nal reporting of violations of the code
to appropriate persons identified in the
code. The code also shall include provi-
sions applicable to the regulated enti-
ty’s principal executive officer, prin-
cipal financial officer, principal ac-
counting officer or controller, or per-
sons performing similar functions, that
are reasonably designed to promote full,
fair, accurate, and understandable
disclosure in reports and other docu-
ments filed with the Securities and Ex-
change Commission and in other public
communications reporting on the enti-
ty’s financial condition.

(b) Review. Not less often than once
every three years, a regulated entity
shall review the adequacy of its code of
conduct and ethics for consistency
with practices appropriate to the enti-
y and make any appropriate revisions
to such code.

§ 1239.11 Risk management.

(a) Risk management program—(1)
Adoption. Each regulated entity’s board
of directors shall approve, have in ef-
fect at all times, and periodically re-
view an enterprise-wide risk manage-
ment program that establishes the reg-
ulated entity’s risk appetite, aligns the
risk appetite with the regulated enti-
ty’s strategies and objectives, address-
es the regulated entity’s exposure to
credit risk, market risk, liquidity risk,
business risk and operational risk, and
complies with the requirements of this
part and with all applicable FHFA reg-
ulations and policies.

(b) Risk appetite. The board of direc-
tors shall ensure that the risk manage-
ment program aligns with the regu-
lated entity’s risk appetite.

(3) Risk management program require-
ments. The risk management program
shall include:

(i) Risk limitations appropriate to
each business line of the regulated enti-
ty;

(ii) Appropriate policies and proce-
dures relating to risk management
governance, risk oversight infrastruc-
ture, and processes and systems for
identifying and reporting risks, including emerging risks;

(iii) Provisions for monitoring compliance with the regulated entity’s risk limit structure and policies relating to risk management governance, risk oversight, and effective and timely implementation of corrective actions; and

(iv) Provisions specifying management’s authority and independence to carry out risk management responsibilities, and the integration of risk management with management’s goals and compensation structure.

(b) Risk committee. The board of each regulated entity shall establish and maintain a risk committee of the board of directors that assists the board in carrying out its duties to oversee the enterprise-wide risk management program at the regulated entity.

(1) Committee structure. The risk committee shall:

(i) Be chaired by a director not serving in a management capacity of the regulated entity;

(ii) Have at least one member with risk management experience that is commensurate with the regulated entity’s capital structure, risk appetite, complexity, activities, size, and other appropriate risk-related factors;

(iii) Have committee members that have, or that will acquire within a reasonable time after being elected to the committee, a practical understanding of risk management principles and practices relevant to the regulated entity;

(iv) Fully document and maintain records of its meetings, including its risk management decisions and recommendations; and

(v) Report directly to the board and not as part of, or combined with, another committee.

(2) Committee responsibilities. The risk committee shall:

(i) Periodically review and recommend for board approval an appropriate enterprise-wide risk management program that is commensurate with the regulated entity’s capital structure, risk appetite, complexity, activities, size, and other appropriate risk-related factors;

(ii) Receive and review regular reports from the regulated entity’s chief risk officer, as required under paragraph (c)(5) of this section; and

(iii) Periodically review the capabilities for, and adequacy of resources allocated to, enterprise-wide risk management.

(c) Chief Risk Officer.—(1) Appointment of a chief risk officer (CRO). Each regulated entity shall appoint a CRO to implement and maintain appropriate enterprise-wide risk management practices for the regulated entity.

(2) Organizational structure of the risk management function. The CRO shall head an independent enterprise-wide risk management function, or unit, and shall report directly to the risk committee and to the chief executive officer.

(3) Responsibilities of the CRO. The CRO shall be responsible for the enterprise-wide risk management function, including:

(i) Allocating risk limits and monitoring compliance with such limits;

(ii) Establishing appropriate policies and procedures relating to risk management governance, practices, and risk controls, and developing appropriate processes and systems for identifying and reporting risks, including emerging risks;

(iii) Monitoring risk exposures, including testing risk controls and verifying risk measures; and

(iv) Communicating within the organization about any risk management issues and/or emerging risks, and ensuring that risk management issues are effectively resolved in a timely manner.

(4) The CRO should have risk management expertise that is commensurate with the regulated entity’s capital structure, risk appetite, complexity, activities, size, and other appropriate risk related factors.

(5) The CRO shall report regularly to the risk committee and to the chief executive officer on significant risk exposures and related controls, changes to risk appetite, risk management strategies, results of risk management reviews, and emerging risks. The CRO shall also report regularly on the regulated entity’s compliance with, and the adequacy of, its current risk management policies and procedures, and shall recommend any adjustments to such
Federal Housing Finance Agency

§ 1239.20 Board of directors of the Enterprises.

(a) Membership—(1) Limits on service of board members.—(i) General requirement. No board member of an Enterprise may serve on the board of directors for more than 10 years or past the age of 72, whichever comes first; provided, however, a board member may serve his or her full term if he or she has served less than 10 years or is 72 years on the date of his or her election or appointment to the board; and

(ii) Waiver. Upon written request of an Enterprise, the Director may waive, in his or her sole discretion and for good cause, the limits on the service of a board member under paragraph (a)(1)(i) of this section.

(2) Independence of board members. A majority of seated members of the board of directors of an Enterprise shall be independent board members, as defined under rules set forth by the NYSE, as amended from time to time.

(3) Segregation of duties. The position of chairperson of the board of directors shall be filled by a person other than the chief executive officer, who shall also be a director of the Enterprise that is independent, as defined under the rules set forth by the NYSE, as amended from time to time.

(b) Meetings, quorum and proxies, information, and annual review—(1) Frequency of meetings. The board of directors of an Enterprise shall meet at least eight times a year and no less than once a calendar quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(2) Non-management board member meetings. Non-management directors of an Enterprise shall meet at regularly scheduled executive sessions without management participation.

(3) Quorum of board of directors; proxies not permissible. For the transaction of business, a quorum of the board of directors of an Enterprise is at least a majority of the seated board of directors and a board member may not vote by proxy.

§ 1239.12 Compliance program.

A regulated entity shall establish and maintain a compliance program that is reasonably designed to assure that the regulated entity complies with applicable laws, rules, regulations, and internal controls. The compliance program shall be headed by a compliance officer, however styled, who reports directly to the chief executive officer. The compliance officer also shall report regularly to the board of directors, or an appropriate committee thereof, on the adequacy of the entity's compliance policies and procedures, including the entity's compliance with them, and shall recommend any revisions to such policies and procedures that he or she considers necessary or appropriate.

§ 1239.13 Regulatory reports.

(a) Reports. Each regulated entity shall file Regulatory Reports with FHFA in accordance with the forms, instructions, and schedules issued by FHFA from time to time. If no regularly scheduled reporting dates are established, Regulatory Reports shall be filed as requested by FHFA.

(b) Definition. For purposes of this section, the term Regulatory Report means any report to FHFA of information or raw or summary data needed to evaluate the safe and sound condition or operations of a regulated entity, or to determine compliance with any:

(1) Provision in the Bank Act, Safety and Soundness Act, or other law, order, rule, or regulation;

(2) Condition imposed in writing by FHFA in connection with the granting of any application or other request by a regulated entity; or

(3) Written agreement entered into between FHFA and a regulated entity.
§ 1239.21 Compensation of Enterprise board members.

Each Enterprise may pay its directors reasonable and appropriate compensation for the time required of them, and their necessary and reasonable expenses, in the performance of their duties.

Subpart E—Bank Specific Requirements

§ 1239.30 Bank member products policy.

(a) Adoption and review of member products policy—(1) Adoption. Each Bank’s board of directors shall have in effect at all times a policy that addresses the Bank’s management of products offered by the Bank to members and housing associates, including but not limited to advances, standby letters of credit, and acquired member assets, consistent with the requirements of the Bank Act, paragraph (b) of this section, and all applicable FHFA regulations and policies.

(2) Review and compliance. Each Bank’s board of directors shall:

(i) Review the Bank’s member products policy annually;

(ii) Amend the member products policy as appropriate; and

(iii) Re-adopt the member products policy, including interim amendments, not less often than every three years.

(b) Member products policy requirements. In addition to meeting any other requirements set forth in this chapter, each Bank’s member products policy shall:

(1) Address credit underwriting criteria to be applied in evaluating applications for advances, standby letters of credit, and renewals;

(2) Address appropriate levels of collateralization, valuation of collateral and discounts applied to collateral values for advances and standby letters of credit;

(3) Address advances-related fees to be charged by each Bank, including any schedules or formulas pertaining to such fees;

(4) Address standards and criteria for pricing member products, including differential pricing of advances pursuant to §1266.5(b)(2) of this chapter, and criteria regarding the pricing of standby letters of credit, including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any of the Banks’ CICA programs under part 1292 of this chapter;

(5) Provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with the requirements of §1271.6(b) of this chapter;

(6) Address the maintenance of appropriate systems, procedures, and internal controls; and

(7) Address the maintenance of appropriate operational and personnel capacity.

§ 1239.31 Strategic business plan.

(a) Adoption of strategic business plan. Each Bank’s board of directors shall have in effect at all times a strategic business plan that describes how the business activities of the Bank will achieve the mission of the Bank consistent with part 1265 of this chapter. Specifically, each Bank’s strategic business plan shall:

(1) Enumerate operating goals and objectives for each major business activity and for all new business activities, which must include plans for maximizing activities that further the Bank’s housing finance and community lending mission, consistent with part 1265 of this chapter;

(2) Discuss how the Bank will address credit needs and market opportunities identified through ongoing market research and consultations with members, associates, and public and private organizations;
§ 1239.32 Audit committee.

(a) Establishment. The audit committee of each Bank established as required by §1239.5(b) shall be consistent with the requirements set forth in this section.

(b) Composition. (1) The audit committee shall comprise five or more persons drawn from the Bank’s board of directors, each of whom shall meet the criteria of independence set forth in paragraph (c) of this section.

(2) The audit committee shall include, to the extent practicable, a balance of representatives of:

(i) Community financial institutions and other members; and

(ii) Independent directors and member directors of the Bank, both as defined in the Bank Act.

(3) The terms of audit committee members shall be appropriately staggered so as to provide for continuity of service.

(4) At least one member of the audit committee shall have extensive accounting or related financial management experience.

(c) Independence. Any member of the Bank’s board of directors shall be considered to be sufficiently independent to serve as a member of the audit committee if that director does not have a disqualifying relationship with the Bank or its management that would interfere with the exercise of that director’s independent judgment. Such disqualifying relationships include, but are not limited to:

(1) Being employed by the Bank in the current year or any of the past five years;

(2) Accepting any compensation from the Bank other than compensation for service as a board director;

(3) Serving or having served in any of the past five years as a consultant, advisor, promoter, underwriter, or legal counsel of or to the Bank; or

(4) Being an immediate family member of an individual who is, or has been in any of the past five years, employed by the Bank as an executive officer.

(d) Charter. (1) The audit committee of each Bank shall review and assess the adequacy of the Bank’s audit committee charter on an annual basis, and shall recommend to the board of directors any amendments that it believes to be appropriate;

(2) The board of directors of each Bank shall review and assess the adequacy of the audit committee charter on an annual basis, shall amend the audit committee charter whenever it deems it appropriate to do so, and shall reapprove the audit committee charter not less often than every three years; and

(3) Each Bank’s audit committee charter shall:

(i) Provide that the audit committee has the responsibility to select, evaluate and, where appropriate, replace the internal auditor and that the internal auditor may be removed only with the approval of the audit committee;

(ii) Provide that the internal auditor shall report directly to the audit committee on substantive matters and that the internal auditor is ultimately accountable to the audit committee and board of directors;

(iii) Provide that the audit committee shall be directly responsible for
the appointment, compensation, retention, and oversight of the work of the external auditor;

(iv) Provide that the external auditor shall report directly to the audit committee;

(v) Provide that both the internal auditor and the external auditor shall have unrestricted access to the audit committee without the need for any prior management knowledge or approval; and

(vi) Provide that the Bank shall make available appropriate funding, as determined by the audit committee, for payment of compensation to the external auditor, to any independent advisors or counsel engaged by the audit committee, and ordinary administrative expenses that are necessary or appropriate for the audit committee to carry out its duties.

(e) Duties. Each Bank’s audit committee shall have the duty to:

(1) Direct senior management to maintain the reliability and integrity of the accounting policies and financial reporting and disclosure practices of the Bank;

(2) Review the basis for the Bank’s financial statements and the external auditor’s opinion rendered with respect to such financial statements (including the nature and extent of any significant changes in accounting principles or the application thereof) and ensure that policies are in place that are reasonably designed to achieve disclosure and transparency regarding the Bank’s true financial performance and governance practices;

(3) Oversee the internal audit function by:

(i) Reviewing the scope of audit services required, significant accounting policies, significant risks and exposures, audit activities, and audit findings;

(ii) Assessing the performance and determining the compensation of the internal auditor; and

(iii) Reviewing and approving the internal auditor’s work plan.

(4) Oversee the external audit function by:

(i) Approving the external auditor’s annual engagement letter; and

(ii) Reviewing the performance of the external auditor.

(5) Provide an independent, direct channel of communication between the Bank’s board of directors and the internal and external auditors;

(6) Conduct or authorize investigations into any matters within the audit committee’s scope of responsibilities;

(7) Ensure that senior management has established and is maintaining an adequate internal control system within the Bank by:

(i) Reviewing the Bank’s internal control system and the resolution of identified material weaknesses and significant deficiencies in the internal control system, including the prevention or detection of management override or compromise of the internal control system; and

(ii) Reviewing the programs and policies of the Bank designed to ensure compliance with applicable laws, regulations and policies, and monitoring the results of these compliance efforts;

(8) Review the policies established by senior management to assess and monitor implementation of the Bank’s strategic business plan and the operating goals and objectives contained therein;

(9) Report periodically its findings to the Bank’s board of directors; and

(10) Establish procedures for the receipt, retention, and treatment of complaints received by the Bank regarding accounting, internal accounting controls, or auditing matters, and for the confidential, anonymous submission by employees of the Bank of concerns regarding questionable accounting or auditing matters.

(f) Meetings. The audit committee shall prepare written minutes of each audit committee meeting.

§ 1239.33 Dividends.

A Bank’s board of directors may not declare or pay a dividend based on projected or anticipated earnings and may not declare or pay a dividend if the par value of the Bank’s stock is impaired or is projected to become impaired after paying such dividend.
PART 1249—BOOK-ENTRY PROCEDURES

Sec. 1249.10 Definitions.
1249.11 Maintenance of Enterprise Securities.
1249.12 Law governing rights and obligations of United States, Federal Reserve Banks, and Enterprises; rights of any person against United States, Federal Reserve Banks, and Enterprises; law governing other interests.
1249.13 Creation of Participant’s Security Entitlement; security interests.
1249.14 Obligations of Enterprises; no adverse claims.
1249.15 Authority of Federal Reserve Banks.
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1249.17 Waiver of regulations.
1249.18 Liability of Enterprises and Federal Reserve Banks.
1249.19 Additional provisions.


SOURCE: 75 FR 55928, Sept. 14, 2010, unless otherwise noted.

§ 1249.10 Definitions.
(a) General. Unless the context requires otherwise, terms used in this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2 and in 12 CFR 1282.1. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the Enterprises.

(b) Other terms. As used in this part, the term:
Book-entry Enterprise Security means an Enterprise Security issued or maintained in the Book-entry System. Book-entry Enterprise Security also means the separate interest and principal components of a Book-entry Enterprise Security if such security has been designated by the Enterprise as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the Enterprises, on which Book-entry Enterprise Securities are issued, recorded, transferred and maintained in book-entry form.

Definitive Enterprise Security means an Enterprise Security in engraved or printed form, or that is otherwise represented by a certificate.

Eligible Book-entry Enterprise Security means a Book-entry Enterprise Security issued or maintained in the Book-entry System which by the terms of its Securities Documentation is eligible to be converted from book-entry form into definitive form.

Enterprise Security means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security.

Entitlement Holder means a Person or an Enterprise to whose account an interest in a Book-entry Enterprise Security is credited on the records of a Securities Intermediary.

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains Book-entry Securities accounts (including Book-entry Enterprise Securities) and transfers Book-entry Securities (including Book-entry Enterprise Securities).

Participant means a Person or Enterprise that maintains a Participant’s Securities Account with a Federal Reserve Bank.

Person, as used in this part, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, an Enterprise, or a Federal Reserve Bank.

Revised Article 8 has the same meaning as in 31 CFR 357.2.

Securities Documentation means the applicable statement of terms, trust indenture, securities agreement or other documents establishing the terms of a Book-entry Enterprise Security.
Security means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a “security”.

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry Enterprise Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

§ 1249.11 Maintenance of Enterprise Securities.

§ 1249.12 Law governing rights and obligations of United States, Federal Reserve Banks, and Enterprises; rights of any person against United States, Federal Reserve Banks, and Enterprises; law governing other interests.
(a) Except as provided in paragraph (b) of this section, the following rights and obligations are governed solely by the book-entry regulations contained in this part, the Securities Documentation, and Federal Reserve Bank Operating Circulars (but not including any choice of law provisions in the Securities Documentation to the extent such provisions conflict with the Book-entry regulations contained in this part):
(1) The rights and obligations of an Enterprise and the Federal Reserve Banks with respect to:
   (i) A Book-entry Enterprise Security or Security Entitlement; and
   (ii) The operation of the Book-entry System as it applies to Enterprise Securities;
(2) The rights of any Person, including a Participant, against an Enterprise and the Federal Reserve Banks with respect to:
   (i) A Book-entry Enterprise Security or Security Entitlement; and
   (ii) A security interest in a Security Entitlement that is in favor of a Participant in a Federal Reserve Bank pursuant to §1249.13(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant’s Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to §1249.13(c)(1), is governed by the law determined in the manner specified in paragraph (d) of this section.
(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.
(d) To the extent not otherwise inconsistent with this part, and notwithstanding any provision in the Securities Documentation setting forth a choice of law, the provisions set forth in 31 CFR 357.11 regarding law governing other interests apply and shall be read as though modified to effectuate the application of 31 CFR 357.11 to the Enterprises.

§ 1249.13 Creation of Participant’s Security Entitlement; security interests.
(a) A Participant’s Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Enterprise Security has been credited to a Participant’s Securities Account.
(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is
marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) An Enterprise and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, an Enterprise, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

§ 1249.14 Obligations of Enterprises; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in §1249.13(c)(1), for the purposes of this part, each Enterprise and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Enterprise Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor an Enterprise shall be liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry Enterprise Security in a Participant’s Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Enterprise Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Enterprise to make payments (including payments of interest and principal) with respect to Book-entry Enterprise Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on Book-entry Enterprise Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Enterprise Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant’s Securities Account in which
they are maintained and by either crediting the amount of the redemption proceeds, including both redemption proceeds, where applicable, to a Funds Account at such Federal Reserve Bank or otherwise paying such redemption proceeds as directed by the Participant. No action by the Participant ordinarily is required in connection with the redemption of a Book-entry Enterprise Security.

§ 1249.15 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Enterprises to perform the following functions with respect to the issuance of Book-entry Enterprise Securities offered and sold by an Enterprise to which this part applies, in accordance with the Securities Documentation, Federal Reserve Bank Operating Circulators, this part, and any procedures established by the Director consistent with these authorities:

(1) To service and maintain Book-entry Enterprise Securities in accounts established for such purposes;

(2) To make payments with respect to such securities, as directed by the Enterprise;

(3) To effect transfer of Book-entry Enterprise Securities between Participants’ Securities Accounts as directed by the Participants;

(4) To effect conversions between Book-entry Enterprise Securities and Definitive Enterprise Securities with respect to those securities as to which conversion rights are available pursuant to the applicable Securities Documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the Enterprise.

(b) Each Federal Reserve Bank may issue Federal Reserve Bank Operating Circulators not inconsistent with this part, governing the details of its handling of Book-entry Enterprise Securities, Security Entitlements, and the operation of the Book-entry System under this part.

§ 1249.16 Withdrawal of Eligible Book-entry Enterprise Securities for conversion to definitive form.

(a) Eligible Book-entry Enterprise Securities may be withdrawn from the Book-entry System by requesting delivery of like Definitive Enterprise Securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry Enterprise Securities from book-entry in the Book-entry System, convert such securities into Definitive Enterprise Securities and deliver them in accordance with such instructions. No such conversion shall affect existing interests in such Enterprise Securities.

(c) All requests for withdrawal of Eligible Book-entry Enterprise Securities must be made prior to the maturity or date of call of the securities.

(d) Enterprise Securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable Securities Documentation.

§ 1249.17 Waiver of regulations.

The Director reserves the right, in the Director’s discretion, to waive any provision(s) of this part in any case or class of cases for the convenience of an Enterprise, the United States, or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Director is satisfied that such action will not subject an Enterprise or the United States to any substantial expense or liability.

§ 1249.18 Liability of Enterprises and Federal Reserve Banks.

An Enterprise and the Federal Reserve Banks may rely on the information provided in a Transfer Message, and are not required to verify the information. An Enterprise and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, or evidence submitted in support thereof.

§ 1249.19 Additional provisions.

(a) Additional requirements. In any case or any class of cases arising under
this part, an Enterprise may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Enterprise be necessary for the protection of the interests of the Enterprise.

(b) Notice of attachment for Enterprise Securities in Book-entry System. The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

PART 1250—FLOOD INSURANCE

§ 1250.1 Purpose.
The purpose of this part is to set forth the responsibilities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) under the Flood Disaster Protection Act of 1973 (FDPA), as amended (42 U.S.C. 4002 et seq.) and the procedures to be used by the Federal Housing Finance Agency (FHFA) in any proceeding to assess civil money penalties against an Enterprise.

§ 1250.2 Procedural requirements.
(a) Procedures. An Enterprise shall implement procedures reasonably designed to ensure for any loan that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), as amended and purchased by the Enterprise, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended.

(b) Applicability. (1) Paragraph (a) of this section shall apply only with respect to any loan made, increased, extended, or renewed after September 22, 1995.

(2) Paragraph (a) of this section shall not apply to any loan having an original outstanding balance of $5,000 or less and a repayment term of one year or less.

§ 1250.3 Civil money penalties.
(a) In general. If an Enterprise is determined by the Director of FHFA, or his or her designee, to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to §1250.2, the Director of FHFA, or his or her designee, may assess civil money penalties against such Enterprise in such amount or amounts as deemed to be appropriate under paragraph (c) of this section.

(b) Notice and hearing. A civil money penalty under this section may be assessed only after notice and an opportunity for a hearing on the record has been provided to the Enterprise.

(c) Amount. The maximum civil money penalty amount is $485 for each violation that occurs before August 1, 2016, with total penalties not to exceed $140,000. For violations that occur on or after August 1, 2016, the civil money penalty under this section may not exceed $534 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed $154,028.

(d) Deposit of penalties. Any penalties under this section shall be paid into the National Flood Mitigation Fund in

(e) Additional penalties. Any penalty under this section shall be in addition to, and shall not preclude, any civil remedy, or criminal penalty otherwise available.

(f) Statute of limitations. No civil money penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this section.


PART 1251—CONTRIBUTIONS TO THE HOUSING TRUST AND CAPITAL MAGNET FUNDS

Sec.
1251.1 Purpose.
1251.2 Definitions.
1251.3 Prohibition on pass-through of cost of allocation; enforcement.
1251.4 Submission of information.

AUTHORITY: 12 U.S.C. 1452(c), 1718(b), 4511(b), 4513(a), 4514(a), 4526(a), and 4567.

SOURCE: 79 FR 74597, Dec. 16, 2014, unless otherwise noted.

§ 1251.1 Purpose.

The purpose of this part is to implement a prohibition against an Enterprise redirecting the cost of any allocation to the Housing Trust Fund or the Capital Magnet Fund required pursuant to section 1337(a) of the Safety and Soundness Act, 12 U.S.C. 4567(a), through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the Enterprise.

§ 1251.2 Definitions.

The following definitions apply to the terms used in and related specifically to this part. Definitions of other terms may be found in 12 CFR part 1201, General Definitions Applying to All Federal Housing Finance Agency Regulations:

Capital Magnet Fund means that Fund established at section 1339(a) of the Safety and Soundness Act, 12 U.S.C. 4569(a).

Housing Trust Fund means that Fund established by section 1338(a) of the Safety and Soundness Act, 12 U.S.C. 4568(a).

§ 1251.3 Prohibition on pass-through of cost of allocation; enforcement.

(a) In general. No Enterprise shall redirect or pass through the cost of any allocation to the Housing Trust Fund or the Capital Magnet Fund required pursuant to section 1337(a) of the Safety and Soundness Act, 12 U.S.C. 4567(a), through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the Enterprise.

(b) Enforcement. Compliance by each Enterprise with the foregoing prohibition shall be enforced under subpart 3 of part B of the Safety and Soundness Act, 12 U.S.C. 4581–89.

§ 1251.4 Submission of information.

The Director may issue guidance, orders, or notices on compliance with section 1337 and this part by the Enterprises, which may include information submissions by the Enterprises.

PART 1252—PORTFOLIO HOLDINGS

Sec.
1252.1 Enterprise portfolio holdings criteria.
1252.2 Effective duration.


SOURCE: 74 FR 5618, Jan. 30, 2009, unless otherwise noted.

§ 1252.1 Enterprise portfolio holding criteria.

The Enterprises are required to comply with the portfolio holdings criteria set forth in their respective Senior Preferred Stock Purchase Agreements with the Department of the Treasury, as they may be amended from time to time.

§ 1252.2 Effective duration.

This part shall be in effect for each Enterprise so long as—

(a) This part has not been superseded through amendment, and

(b) The Enterprise remains subject to the terms and obligations of the respective Senior Preferred Stock Purchase Agreement.
PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

Sec.
1253.1 Purpose and authority.
1253.2 Definitions.
1253.3 Notice of new activity.
1253.4 New product approval.
1253.5 Confidential information.
1253.6 Certifying and nullifying an approval.
1253.7 Failure to comply.
1253.8 Availability of new product to an Enterprise after it has been approved for the other Enterprise.
1253.9 Preservation of authority.

APPENDIX TO PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS: INSTRUCTIONS AND NOTICE OF NEW ACTIVITY FORM

SOURCE: 74 FR 31604, July 2, 2009, unless otherwise noted.

§ 1253.1 Purpose and authority.

The purpose of this part is to establish policies and procedures implementing the prior approval authority for enterprise products, in accordance with section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4541), as amended.

§ 1253.2 Definitions.

For purposes of this part:


Director means the Director of the Federal Housing Finance Agency or his or her designee.

Enterprise means the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

FHFA means the Federal Housing Finance Agency.

New activity means with respect to an Enterprise, any business line, business practice, or service, including guarantee, financial instrument, consulting, or marketing, that is proposed to be undertaken by the Enterprise either on a standalone basis or as an incident to providing one or more Enterprise products to the market, and which was—

(a) Not initially engaged in prior to July 30, 2008;

(b) Commenced by the Enterprise prior to July 30, 2008, but which, after July 30, 2008, the Enterprise ceased to engage in, and presently intends to resume; or

(c) Offered or engaged in by the Enterprise after July 30, 2008, at a significantly different level, or in a significantly different manner, in terms of the activity’s effect on public interest or risk to the Enterprise or the mortgage finance or financial system.

The term “new activity” does not include—

(1) Any Enterprise business practice, transactions, or conduct performed solely as an incident to the administration of the Enterprise’s internal affairs to conduct its business; or

(2) Any business practice or service undertaken by an Enterprise that is de minimis in scope, volume, risk, or duration.

New product means any activity that the Director determines merits public notice and comment on matters of compliance with the applicable authorizing statute, safety and soundness, or public interest. “New product” does not include—

(a) The automated loan underwriting system of an Enterprise in existence as of July 30, 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system;

(b) Any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by the Enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing;

(c) Any activity that is substantially similar to the activities described in paragraphs (a) or (b) of this section;

(d) Any activity that is substantially similar to an activity or product that has been approved in accordance with this part for either Enterprise; or
§ 1253.3 Notice of new activity.

(a) Before commencing a new activity, an Enterprise must submit a Notice of New Activity (Notice) to the FHFA, and either receive a determination that the new activity is not a new product, await passage of the 15 business-day period as described in paragraph (d) of this section, or, where FHFA determines the new activity to be a new product, await approval of the new product under §1253.4. In addition, for any new activity that an Enterprise seeks to engage in which FHFA had previously approved in accordance with this part for the other Enterprise, or in which the other Enterprise had engaged continuously since prior to July 30, 2008, the Enterprise must submit a Notice to FHFA. In support of its Notice, the Enterprise shall submit information sufficient to allow the Director to make a determination on the Notice pursuant to section 1321 of the Safety and Soundness Act (12 U.S.C. 4541), as amended, including any information required by FHFA by regulation or otherwise. The Enterprise shall provide a thorough, meaningful, complete and specific description of the new activity such that the public will be able to provide fully informed comment on the new activity if FHFA determines the new activity to be a new product. Such information shall include that contained in the FHFA Notice Form and the Instructions for the FHFA Notice of New Activity Form (Notice Form Instructions) that appear in the appendix of this part. The Notice Form and Notice Form Instructions may be amended from time to time by written direction of the Director. Requests for confidential treatment for any portion of an Enterprise’s submission must be made consistent with §1253.5.

(b) FHFA will evaluate a Notice to establish whether the submission contains sufficient information for FHFA to make a determination whether the new activity is a new product subject to prior approval. Upon establishing that the Notice contains sufficient information, FHFA shall deem the submission complete and “received” for purposes of section 1321(e)(2)(B) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)(B)), and shall notify the Enterprise accordingly.

(c) No later than 15 business-days after the Notice is deemed completed and “received” for purposes of section
§ 1253.4 New product approval.

(a) Public notice. If the Director determines that the new activity is a new product, FHFA shall publish a public notice soliciting comments on the proposed product for a 30 calendar-day period.

(1) The public notice will describe the new product and state the closing date of the public comment period. The public notice will provide instructions for submission of public comment.

(2) The Director will consider all public comments received by the closing date of the comment period.

(3) In computing the 30 calendar-day public comment period, FHFA excludes the day on which the public notice is published in the Federal Register, from which the period begins to run, and includes the last day of the period, regardless of whether it is a Saturday, Sunday, or legal holiday.

(b) Director’s determination. (1) No later than 30 calendar-days after the end of the public comment period, the Director will provide the Enterprise with a written determination on whether it may proceed with the new product. The written determination will specify the grounds for the Director’s determination.

(2) The Director will approve the new product if the Director determines that the new product complies with the applicable authorizing statute, is in the public interest, and is consistent with the safety and soundness of the Enterprise and the mortgage finance and financial system. The Enterprise may then offer the new product subject to any terms, conditions, or limitations as may be established by the Director.

(3) Among the factors that the Director may consider when determining whether a new product is in the public interest are—

(i) The degree to which the new product might reasonably be expected to advance any of the purposes of the Enterprise under the applicable authorizing statute;

(ii) The degree to which the new product serves underserved markets as set forth in section 1335 of the Safety and Soundness Act (12 U.S.C. 4565);

(iii) The degree to which the new product is being supplied or could be supplied by non-government-sponsored-enterprise firms;

(iv) Other alternatives for providing the new product;

(v) The degree to which the new product promotes competition in the marketplace or, to the contrary, would result in less competition and greater concentration of economic activity or risk;

(vi) The degree to which Enterprise provision of the new product overcomes natural market barriers or inefficiencies;

(vii) The degree to which Enterprise provision of the new product might raise or mitigate systemic risks to the mortgage, mortgage finance or other financial markets;

(viii) The degree to which the new product furthers fair housing; and

(ix) Such other factors determined appropriate by the Director.

(4) The Director will disapprove the new product if the Director determines that approval is inconsistent with applicable law, regulation, or FHFA policy thereunder, or contrary to public interest or the safety and soundness of the Enterprise or the mortgage finance or financial system. If the Director disapproves the new product, the Enterprise may not offer the new product.
§ 1253.5 Confidential information.

(a) Information presumed public. FHFA will treat all information an Enterprise submits in a Notice as public information, except as provided in paragraphs (b) through (d) of this section. FHFA will also treat information provided by a commenter, in response to a notice requesting comment on an Enterprise new product, as public information, except as provided in paragraphs (b) through (d) of this section.

(b) Confidential treatment request. An Enterprise or commenter may designate specific information as confidential and request that it not be made publicly available. For any information that an Enterprise or commenter seeks confidential treatment, the Enterprise or commenter is required to submit a complete copy of the Notice or comment, with a specific request for confidential treatment. Simultaneously, the Enterprise or commenter is required to submit a copy of the Notice or comment containing only those portions for which no request for confidential treatment is made, and from which those portions for which confidential treatment is requested have been redacted. The Enterprise or
commenter must specify the bases for designated information not being made public as set forth in paragraph (c) of this section.

(c) **Required information.** The Enterprise or commenter is required to provide the following information in support of its request for confidential treatment of the designated information—

(1) Identification of the specific information for which confidential treatment is sought, and the specific Notice for which the information is being submitted;

(2) Explanation of the bases for the proposed confidential treatment including, but not limited to, why the information is “commercial or financial information obtained from a person and privileged or confidential” as that phrase is used in Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), and §1202.4(a)(4) of this chapter;

(3) Explanation of the relevance and necessity of the information to whether the Notice should be approved or denied;

(4) Explanation of how disclosure of the information would result in substantial harm to the competitive position of the Enterprise or commenter;

(5) Explanation of whether the information is available to the public and the extent of any previous disclosure to third parties;

(6) Justification of the time period during which the Enterprise or commenter asserts that the material should not be available for public disclosure; and

(7) Any other information that the Enterprise or commenter seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

(d) **FHFA determination.** FHFA will determine whether the designated information may be withheld from public disclosure and will notify the Enterprise or commenter of the determination. In the event that FHFA determines the information may not be withheld from public disclosure, the Enterprise or commenter may withdraw the information or consent to public disclosure. Requests for confidential treatment that do not comply with paragraphs (b) and (c) of this section will not be considered.

§ 1253.6 **Certifying and nullifying an approval.**

(a) An Enterprise shall certify, through an executive officer, as that term is defined by §1770.3(g) of this title, that any filing or supporting material submitted to FHFA pursuant to regulations in this part contains no material misrepresentations or omissions. FHFA may review and verify any information filed in connection with a Notice. If FHFA discovers a material misrepresentation or omission after the Director has rendered a decision on the filing, FHFA may nullify any approval or modify the terms, conditions, and limitations to such approval. For purposes of this paragraph, an Enterprise’s authority to offer a new product or engage in a new activity by reason of the Director’s not having made an explicit determination within the statutory time period constitutes an approval.

(b) Any person responsible for any material misrepresentation or omission in a submission or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

§ 1253.7 **Failure to comply.**

(a) Unless the Director otherwise informs the Enterprise in writing, an Enterprise must cease offering a new product or engaging in a new activity immediately upon discovering or receiving notice from the Director that the Enterprise has—

(1) Offered a new product or commenced a new activity without submitting a Notice;

(2) Offered a new product or commenced a new activity after submitting a Notice but before approval is granted, and before the expiration of the time provided for the Director to make a determination under §§1253.3 and 1253.4;

(3) Offered a new product after the Director disapproved it; or

(4) Failed to adhere to any terms, conditions or limitations established by the Director in his or her approval of a new product or activity.
§ 1253.8

(b) Within five (5) business-days of the discovery or notice of any of the events described in paragraph (a) of this section, the Enterprise must provide the Director a written description of the failure or failures of controls that resulted in the offering of the new product or commencement of the new activity in contravention of this regulation, and the steps that the Enterprise has taken or will take to remediate the control failures. The Enterprise must provide the board of directors of the Enterprise and chief risk officer, internal audit, and compliance officer of the Enterprise with a copy of the written description on the same date the description is provided to the Director of FHFA.

(c) In the event that the Enterprise elects to resubmit the Notice of a new product or new activity that was undertaken in contravention of this regulation, the resubmission must provide sufficient documentation of the effectiveness of the remediation efforts described in paragraph (b) of this section.

(d) Failure to comply with paragraphs (a) or (b) of this section above may result in FHFA’s taking enforcement action, including pursuant to 12 U.S.C. 4631 (orders to cease and desist), 12 U.S.C. 4632 (temporary orders to cease and desist), and 12 U.S.C. 4636 (civil money penalties).

§ 1253.8 Availability of new product to an Enterprise after it has been approved for the other Enterprise.

(a) If the Director approves a new product for one Enterprise or the new product is otherwise available to that Enterprise under § 1253.4, the other Enterprise may also undertake that new product, subject to submitting a request to the Director in the form of a Notice under § 1253.3 and approval by the Director.

(b) The Director may require such further information from the requesting Enterprise as he or she deems necessary to approve or deny the request. Approving the request does not require public notice and comment.

§ 1253.9 Preservation of authority.

(a) The Director’s exercise of his or her authority pursuant to the prior approval authority for products under section 1321 of the Safety and Soundness Act (12 U.S.C. 4541), and this regulation and other issuances in no way restricts—

(1) The safety and soundness authority of the Director over all new and existing products or activities; or

(2) The authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an Enterprise.
APPENDIX TO PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS—
INSTRUCTIONS AND NOTICE OF NEW ACTIVITY FORM

Appendix to Part 1253

PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

INSTRUCTIONS for the NOTICE of NEW ACTIVITY FORM

INSTRUCTIONS FOR NNA SUBMISSION

GENERAL INSTRUCTIONS

The Notice of New Activity (NNA) submission addresses two functions of the Federal Housing Finance Agency—it provides information on activities that may constitute a new product or new activity under the Housing and Economic Recovery Act of 2008 (12 USC 4541) and on activities that do not constitute a new product subject to the approval provisions of the law, but represent an activity that merits safety and soundness review under multiple provisions of the Federal Housing Enterprises Financial Safety and Soundness Act (12 USC 4501 et seq.)

Once the submission is made, FHFA will first determine if the activity is a new product and will direct consideration of such product under the provisions of the statute and regulation, which may involve public comment. If the new activity is determined not to be a new product, then the information contained in the submission will be employed by FHFA for a review of safety and soundness matters as part of its routine supervisory program.

A. Notice of New Activity (NNA) Submission

1. New Activity. A new activity for purposes of this submission includes the planned deployment of a new activity that constitutes a new product under the approval provision of FHEFSSA as amended by HERA or a significant expansion or alteration of an existing activity or product that does not require approval under HERA amendments of 2008 but is to be reviewed under safety and soundness provisions of the Act. A new activity may include alteration of an existing activity in such a manner as to affect significantly the risk, management, capital effect, operational controls, legal effect, anticipated business impact on the Enterprise (dollar effect), and accounting or taxation for such activity. This will include a pilot program.

A new activity does not include a minor, non-substantive transaction or activity that does not involve significant credit, interest rate, operational (including internal control and accounting) or reputation risk separate and apart from an existing activity. In general, a new activity would not include an increase in an existing product or activity of less than a 25% investment increase. For
example, if an existing multi-family mortgage purchase activity will be altered to require collection and analysis of additional loan data to facilitate Enterprise purchases, even though the change may be labeled as “new” by the Enterprise in its communications, the Enterprise may inform FHFA that it does not constitute a new activity but rather an activity or product addition or enhancement. The Enterprises will work with examiners to assure clarity regarding whether an activity is new and fits within the Notice of New Activity (NNA) submission requirement.


A new product does not include: (a) the automated loan underwriting system of an Enterprise in existence as of July 30, 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system; and (b) any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by the Enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; or (c) any activity that is substantially similar to the activities described in (a) and (b).

3. Expanded activity or product. In general, a significant expansion of an activity or product constitutes an expanded existing activity or product, subject to a submission requirement for a safety and soundness review, if it fits one or more of the following criteria:

-- expanded scope of an activity or product, including a significant increase in size, in risk levels (credit, interest rate, market or operational) or a significant change in activity or product limits or marketing;

-- movement from a pilot program or product test to a fully deployed activity or product; or

-- such other criteria as provided in writing by the Director.

4. Consultation with FHFA. Prior to submitting a NNA, an Enterprise may seek clarification that while an initiative meets one or more of the criteria for an expanded activity or product, the change does not meet a level of significance to justify filing a NNA or presents timing concerns that are not addressed under procedures set forth below.

B. Exemptions

The exemptions from submitting a NNA included in the definitions provided above do not exempt reporting or other communications to examiners or other offices under separate requests by or reporting requirements of FHFA.

C. Procedures and Content

1. Submission to FHFA

Instructions for the Notice of New Activity Form (FHFA Form # 071) (06/2009)

(a) Normal Submission. Completed notices of new business activities or products, or expansion or alteration of an existing activity or product, should be provided on a NNA to FHFA. If a determination is made that an activity represents a new product and that a public comment period is required, the Director shall so inform the Enterprise as soon as practicable. Unless notified otherwise in writing by FHFA, an Enterprise may not undertake a new activity until more than fifteen (15) business days after a completed notice was submitted to FHFA, or a new product until more than sixty (60) days after a determination that an activity represents a new product.

(b) Temporary Approval. An Enterprise may request temporary approval for a new product pursuant to 12 CFR 1253.4(c) upon exigent circumstances that make the delay associated with the 30-day public comment period contrary to the public interest. If an Enterprise requests temporary approval, it shall indicate such request on the NNA along with any supporting information. An Enterprise may request temporary approval for an expanded product or activity where circumstances exist meriting such temporary approval, such as a compelling business need, public interest, judicial order, regulatory directive from another federal agency or other emergency situation. Such request should be made at the time of submitting a NNA.

(c) Confidentiality. Information labeled confidential or proprietary contained in a NNA will be considered for such treatment by FHFA pursuant to 12 CFR 1253.5.

(d) Completing NNA Form.

(i) Provide a response or comment on every item in the Form. If an item on the Form is not applicable or relevant, state so and briefly explain why.

(ii) Responses or comments should be comprehensive; address all issues contained in an item.

(iii) Provide appropriate supporting documentation. Indicate on the form the number of the supporting item(s) and on the attached item(s) to which requirement the documentation refers.

(iv) If all items are not addressed, or if the information does not provide FHFA with sufficient bases upon which to make a determination, FHFA will not consider the Form received and will not process the Form.

(e) Submitting the Form

(i) Submit an electronic copy of the Form and supporting documents to: newproducts@fhfa.gov. Be sure to clearly label supporting documents and reference the item(s) to which they relate; and,

Instructions for the Notice of New Activity Form (FHFA Form # 071) (06/2009)

III
D. Supplemental Instructions

<table>
<thead>
<tr>
<th>Name of Proposed Activity/New Product</th>
<th>Insert the name by which the Enterprise refers to the proposed new activity/new product.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1</td>
<td>The indication that a new activity is or is not a new product should include detailed information in support of such a determination. Reference should be made to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, and to FHFA regulation on new products. Such supporting information should include a legal analysis and supporting historical information. Even if a new product determination has been previously made by FHFA, the Enterprise should note such determination and why the new activity does or does not fit within such prior determination as well as whether there are safety and soundness or charter matters that require additional consideration for the Enterprise to offer such activity or product. The description should address the factors the Director may consider when determining whether a new activity is “substantially similar” to the activities described in 12 USC 4541(c)(1)(A) and (B) or other activities that have been previously approved in accordance with 12 USC 4541 which include: (1) if the activity in question is a product; (2) whether the new activity is authorized under the Charter Act (Fannie Mae) or Corporation Act (Freddie Mac); (3) whether the activity in question represents an upgrade to the way an approved product is delivered; (4) whether the activity in question poses a significant change in risk to the Enterprise or mortgage finance system from a previously approved product or activity; (5) whether the activity in question involves a significant change in terms, conditions, or limitations expressly contained in any prior approval granted under this part; (6) whether the activity in question poses a significant change in its effect on the public interest compared to a previously approved product or activity; (7) the tradeoff between any combinations of changes in risk, public interest, and safety and soundness; (8) whether the activity in question is likely to require the dedication of significantly more Enterprise resources; (9) whether the activity in question requires approval by regulators other than FHFA; (10) whether the activity in question involves new classes or types of borrowers, investors, or counterparties or new classes or types of collateral; or (12) such other factors as FHFA determines appropriate.</td>
</tr>
</tbody>
</table>

*Instructions for the Notice of New Activity Form (FHFA Form # 071) (06/2009)*

IV
<table>
<thead>
<tr>
<th>Item 5</th>
<th>Information about the management structure should include names and titles. Organizational charts should be attached. Staffing plans should indicate authorized and on-board levels as of a stated date.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 6</td>
<td>The description should address the factors the Director may consider when determining whether the proposed new activity is in the public interest. These factors include: (1) the degree to which the proposed new activity might reasonably be expected to advance any of the four charter purposes of Fannie Mae or Freddie Mac; (2) the degree to which the activity serves underserved markets as set forth at 12 USC 4565; (3) the degree to which the activity is being supplied or could be supplied by non-government-sponsored-enterprise firms; (4) other alternatives for providing the service to the market; (5) the degree to which the new activity promotes competition in the marketplace or, to the contrary, would result in less competition and greater concentration of economic activity or risk; (6) the degree to which Enterprise provision of the service overcomes natural market barriers or inefficiencies; (7) the degree to which Enterprise provision of the activity might raise or mitigate systemic risks to mortgage and financial markets; (8) the degree to which the activity furthers fair housing; and (9) such other factor determined appropriate by FHFA.</td>
</tr>
<tr>
<td>Item 8</td>
<td>This includes applications for patents, and requires copies of correspondence FROM the Enterprise TO other regulators or foreign governments. “Foreign governments” includes agencies and regulatory bodies of foreign governments.</td>
</tr>
<tr>
<td>Item 15</td>
<td>The description should indicate whether and the extent to which the proposed new activity increases or decreases risk for each risk component (credit, market, model, governance (including reputation), and operational risk).</td>
</tr>
</tbody>
</table>

The instructions provided here and the information required by the FHFA Notice of New Activity Form may be modified by FHFA from time to time, and written notice will be provided in advance to the Enterprises of any such modification.
Enterprise: ____________________________

Purpose of the Proposed New Activity/New Product/Expanded Activity Submission

The Notice of New Activity (NNA) submission addresses two functions of the Federal Housing Finance Agency—it provides information on activities that may constitute a new product or new activity under the Housing and Economic Recovery Act of 2008 (12 USC 4541) and on activities that do not constitute a new product subject to the approval provisions of the law, but represent an activity that merits safety and soundness review under multiple provisions of the Federal Housing Enterprises Financial Safety and Soundness Act (12 USC 4501 et seq.)

Once the submission is made, FHFA will first determine if the activity is a new product and will direct consideration of such product under the provisions of the statute and regulation, which may involve public comment. If the new activity is determined not to be a new product, then the information contained in the submission will be employed by FHFA for a review of safety and soundness matters as part of its routine supervisory program.

Enterprise Contact Information:

Name: ____________________________
Title: ____________________________
Telephone Number: ____________________________
Email Address: ____________________________

Name of the Proposed New Activity/New Product/Expanded Activity:

______________________________

Description of the Proposed New Activity/New Product/Expanded Activity:

1. Description of Activity/New Product. Provide a complete and specific description of the proposed new activity, and provide the Enterprise’s view of why this proposed new activity should or should not be considered a new product.

FHFA Form # 071 (06/2009) (Notice of New Activity Form)
(For example, explain why an activity relates to an upgrade of the automated underwriting system in existence as of July 30, 2008, relates to a modification to mortgage terms and conditions without altering the underlying transaction or relates to any activity substantially similar to any existing activity, as provided under 12 USC 4541(e) and 12 CFR Part 1253).

[If the activity is considered a new product, insure that any information the Enterprise feels should not be made public is so designated with an explanation for such designation. Also, if the activity is considered a new product, please provide the Enterprise’s view on whether the new product should be considered for temporary approval.]

NOTE: the term “new activity” as employed here, encompasses “new product.” Also see definition of “new activity” in 12 CFR 1253.2.

2. **Business Rationale and intended market.** Describe the business rationale for the proposed new activity. If the proposed new activity represents a business line for the Enterprise, describe the business line, and the rationale for the business line, and what products are being offered or proposed to be offered under such business line. Also describe the intended market for the proposed activity, including any market research performed relating to the proposed activity.

3. **Unusual or Unique Characteristics.** Describe any unusual or unique characteristics of the activity, including those involving reputation risks.

4. **Projected Size and Start Date of the New Activity.** State the anticipated commencement date for the proposed new activity. Describe and provide analysis, including assumptions, development expenses, expectations for the impact of and projections for the projected quarterly size (for example, in terms of cost, personnel, volume of activity, or risk metrics) of the proposed new activity for the first 12 quarterly periods of deployment and projected profit and loss.

5. **Units and Personnel with Responsibility over the New Activity.** Describe the Enterprise business unit(s) involved in conducting the proposed new activity, including any non-Enterprise affiliation or subsidiary relationships, and the roles of each. Describe the management structure, including proposed manager(s) of the proposed new activity; reporting lines, planned oversight, and review of the activity; and proposed staffing for the activity.

6. **Impact on Public Interest.** Describe the impact of the proposed new activity on the public interest compared to a previously approved activity. Provide sufficient information to address the factors the Director may consider when determining whether the proposed activity is in the public interest, including: (1) the degree to which the proposed product might reasonably be expected to advance any of the four charter purposes of Fannie Mae or Freddie Mac; (2) the degree to which the proposed product serves underserved markets.
as set forth at 12 USC 4565; (3) the degree to which the proposed product is being supplied or could be supplied by non-government-sponsored-enterprise firms; (4) other alternatives for providing the service to the market; (5) the degree to which Enterprise provision of the service overcomes natural market barriers or inefficiencies; (6) the degree to which Enterprise provision of the proposed product might raise or mitigate systemic risks to mortgage and financial markets; and (7) the degree to which the proposed product furthers fair housing.

7. Legal Analysis. Provide a legal opinion on whether the proposed activity complies with the Enterprise’s authorizing statute, does or does not constitute a new product and other legal matters relating to the deployment and offering of the new product. Provide copies of legal opinions from in-house or outside counsel relating to the Enterprise’s proposed activity. If the Enterprise is relying on the “necessary and incidental” authority, describe in detail how the proposed new activity is necessary and incidental to one or more specific charter authorities. Legal analysis should include other non-charter compliance matters. If legal analysis was provided for a similar activity such analysis may be appended with such additional analysis as is appropriate.

8. Other Regulatory Applications. Provide copies of all notice and/or application documents— including any application for patents—the Enterprise has submitted to other regulators (federal, state or local) or to foreign governments relating to the proposed new activity. Include all presentation documents, correspondence with the regulator or government pertaining to the application or notice, and all decisional documents issued by the regulator or foreign government.

9. Relationships with non-secondary market participants. Describe the extent to which the proposed new activity includes relationships with non-secondary market participants, including, but not limited to: borrowers, real estate brokers, housing counselors, mortgage brokers and government officials.

10. Business Requirements. Describe any business requirements for the proposed new activity, including for example, data processing systems, accounting systems, performance tracking systems, and interface capacity with other Enterprise systems and departments.

11. Acquisition. If an acquisition is involved, describe the financial features of the transaction and provide pro forma financials of the acquiree.

12. Accounting Treatment. Explain whether the proposed new activity is expected to have an accounting effect; explain any accounting treatment proposed for the new activity.

13. Tax Implications. Describe the anticipated tax impact of the proposed new activity, and provide analysis, including assumptions, expectations for the impact of, and projections for tax liabilities (credits) associated with the proposed new activity on a quarterly basis for the first 12 quarterly periods of the new activity's commencement.
14. **Earnings and Capital Implications.** Describe, explain and provide analysis, including assumptions, expectations for the impact of, and projections for the anticipated impact to earnings and capital of the proposed new activity on a quarterly basis for the first 12 quarterly periods of the new activity’s commencement.

15. **Risk Implications.** Describe the impact of the proposed new activity on the risk profile of the Enterprise and on the mortgage finance system from a previously approved activity. Provide sufficient information to document whether the impact represents a material change to the Enterprise’s risk profile.

16. **Performance reports and Risk Controls.** Describe the type of information that will be contained in the routine reports that will be generated to capture the performance of the proposed activity, and include prototype of such performance reports. Describe any and all routine and special controls in place or planned to be put in place for the proposed new activity. Include in the description: operational risk controls; credit risk controls; market risk controls; model risk controls; and governance (including reputation) risk controls. To the extent possible, quantify the risks associated with the proposed activity.

17. **Other Safety and Soundness Implications.** Describe how the proposed new activity is consistent with the safety and soundness of the Enterprise and the mortgage finance and financial system. Include information about the process the Enterprise went through to develop the proposed new activity and to obtain necessary internal approvals (including at the executive level, the executive committee level and/or Board of Directors level). Provide copies of any: presentations made to executives, executive committees or Board of Directors; minutes of meetings at which such presentations were made; and decision documents. FHFA will automatically consider such Board presentations, minutes, and decisions documents for confidential treatment under 12 CFR 1253.5.

**CERTIFICATION:**

To the best of my knowledge and belief, the information contained in this filing, including any supporting materials, contains no material misrepresentations or omissions, is true, correct and complete.

Signed: ________________________________

Print Name: ________________________________

Title: ________________________________

Date: ________________________________

FHFA Form # 071 (06/2009) (Notice of New Activity Form)
Sec. 1260.1 Definitions.
1260.2 Bank information to be shared.
1260.3 Requests to withhold proprietary information.
1260.4 Timing and form of information distribution.
1260.5 Control and disclosure of shared information.

AUTHORITY: 12 U.S.C. 1440a, 4511 and 4513.
SOURCE: 78 FR 73413, Dec. 6, 2013, unless otherwise noted.

§ 1260.1 Definitions.
As used in this part:
Non-public information has the meaning set forth in § 1214.1 of this chapter.
Proprietary information means trade secrets, or privileged or confidential commercial or financial information that, if shared among the Banks and the Office of Finance as provided under this part, would likely cause substantial competitive harm to the Bank to which the information pertains.

§ 1260.2 Bank information to be shared.
(a) General. In order to enable each Bank to evaluate the financial condition of any one or more of the other Banks and the Bank System, FHFA shall distribute to each Bank and to the Office of Finance, or shall require each Bank to distribute directly to each other Bank and the Office of Finance, such categories of financial and supervisory information regarding each Bank and the Bank system as it determines to be appropriate, subject to the requirements of this part.

(b) Notice. FHFA shall prepare and issue to each Bank and the Office of Finance a notice setting forth the categories of information to be distributed, which it shall review from time to time and revise as necessary to ensure that the information distributed remains useful to the Banks in evaluating the financial strength of the other Banks and the Bank System. Prior to issuing a new or revised notice, FHFA shall notify each Bank and the Office of Finance of its proposed contents and allow them a reasonable period within which to comment.

(c) Director's orders. The Director or his designee may issue such orders as are necessary to effect the distribution of the information set forth in the notice issued under paragraph (b) of this section and to carry out the provisions of this part.

§ 1260.3 Requests to withhold proprietary information.
(a) General. A Bank may request in writing that FHFA withhold from distribution, or determine that the Bank may withhold from distribution, particular information relating to the Bank that may otherwise be subject to distribution under § 1260.2 on the basis that it is proprietary information and the public interest requires that it not be shared. Any such request shall identify the particular information the Bank believes should not be distributed and provide support for the assertions that it is proprietary information and that withholding it from the other Banks and the Office of Finance is necessary to protect the public interest.

(b) Timing of requests. (1) General. Unless otherwise specified as described in paragraph (b)(2) of this section, the period within which a Bank may make a request to withhold proprietary information under paragraph (a) of this section shall be as follows:
(i) For information that a Bank submits to FHFA, the request shall be delivered to FHFA no later than the time at which the Bank submits the subject information to FHFA.
(ii) For information that FHFA creates (not including compilations of data submitted by the Banks), prior to distributing any information relating to a particular Bank, FHFA shall provide that Bank with a copy of the information to be distributed, after which the Bank shall have ten (10) business days within which to deliver the request to FHFA.
(iii) For information that a Bank is required to distribute directly to the other Banks and the Office of Finance,
the request shall be delivered to FHFA no later than ten (10) business days prior to the date on which the Bank would otherwise be required to distribute the information.

(2) As otherwise specified by FHFA. Any notice issued by FHFA under §1260.2(b) may establish requirements for the timing of requests to withhold proprietary information that are different from those specified under paragraph (b)(1) of this section for any category of information to be distributed thereunder. In establishing such requirements, FHFA shall give due regard to the volume and complexity of the information to be reviewed, the Bank's existing familiarity with the information, the frequency of submission or distribution of the information, the likelihood that the information will contain proprietary information, and the effect that any delay in the distribution of the information would have on the fulfillment of the purposes of section 20A(a) of the Bank Act.

(c) Determination and notice by FHFA. After receiving a written request that meets the requirements of paragraphs (a) and (b) of this section, the Director or his designee shall promptly determine whether FHFA will, or the Bank may, withhold any information from distribution pursuant to the request, which determination shall be final. FHFA shall promptly notify the affected Bank of that determination and shall not distribute any information that is the subject of the request until it has provided the required notice to the Bank.

§ 1260.4 Timing and form of information distribution.

(a) Timing of distribution by FHFA. FHFA may distribute information as provided in the notice issued under §1260.2(b) after the expiration of the applicable time period specified in §1260.3(b) unless, within that time period, the affected Bank has filed with FHFA a written request to withhold particular proprietary information that meets the requirements of §1260.3(a). When a Bank has filed such a request, FHFA shall not distribute the information that is the subject of the request until the Director or his designee has made the determination and provided the notice required by §1260.3(c) and shall distribute or withhold the subject information in conformity with that determination.

(b) Timing of distribution by Banks. A Bank that is required to distribute information directly to the other Banks and the Office of Finance shall distribute that information at the time specified in the notice issued under §1260.2(b) unless, within the time period specified in §1260.3(b)(1)(iii), the Bank has submitted to FHFA a request to withhold particular proprietary information that meets the requirements of §1260.3(a). If the Bank has filed such a request, it need not distribute the information that is the subject of the request until the Director or his designee has made the determination and provided the notice required by §1260.3(c). Thereafter, the Bank shall distribute or withhold the subject information in conformity with that determination.

(c) Form. FHFA may distribute information, or require a Bank to distribute information, under this part in either tangible or electronic form, as it deems appropriate.

§ 1260.5 Control and disclosure of shared information.

(a) No waiver of privilege. The release of information under this part does not constitute a waiver by FHFA of any privilege, or of its right to control, supervise or impose limitations on the subsequent use and disclosure of any information concerning a Bank. To the extent that any information provided to a Bank or the Office of Finance pursuant to this part qualifies as non-public information under part 1214 of this chapter, that information shall continue to qualify as such and shall continue to be subject to the restrictions on disclosure set forth in part 1214. Provided that a Bank shall not be deemed to have violated any provision of §1214.3 of this chapter by disclosing in its filings with the SEC non-public information about another Bank that was obtained pursuant to this part if the disclosure is limited to a recital of the relevant factual content of the underlying information and the Bank has provided the notice required by paragraph (b) of this section.

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(b) Disclosures under the Federal securities laws. If a Bank determines in good faith that it is required by any applicable provision of the 1934 Act or of 17 CFR chapter II to disclose non-public information relating to another Bank that it has received pursuant to this part, it shall provide to FHFA and to the Bank to which the information pertains prior written notice of such determination and of the content and anticipated timing of the disclosure, which notice shall be provided as far in advance of the anticipated disclosure as is feasible under the circumstances.

(c) Safeguarding of information. A Bank may use non-public information distributed pursuant to this part only for the purposes described in section 20A(a) of the Bank Act. Except as otherwise provided in this part, neither the Office of Finance, nor any Bank, nor any officer, director or employee thereof, may disclose or permit the use or disclosure of any non-public information regarding another Bank received pursuant to this part in any manner or for any purpose. Each Bank and the Office of Finance shall implement policies and procedures to prevent the improper disclosure of such information and to limit the access of its personnel to such information, which policies and procedures shall be no less stringent than those that apply to the entity’s own confidential and supervisory information.

(d) Information regarding the Office of Finance. A Bank president that receives any information regarding the Office of Finance in his or her capacity as a member of the board of directors of the Office of Finance may share the information with the board of directors of the Bank at which he or she is employed, as well as with the appropriate officers and employees of the Bank, subject to the limitations of this part.

PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

Subpart A—Definitions

Sec. 1261.1 [Reserved]
§ 1261.3 General provisions.

(a) Board size and composition. Annually, the FHFA Director will determine the size of the board of directors for each Bank and will designate at least a majority, but no more than 60 percent, of the directorships as member directorships and the remainder as independent directorships. Annually, the board of directors of each Bank shall determine how many, if any, of the independent directorships with terms beginning the following January 1 shall be public interest directorships, ensuring that at all times the Bank will have at least two public interest independent directorships.

(b) Term of directorships. The term of office of each directorship shall be four years, except as adjusted pursuant to section 7(d) of the Bank Act (12 U.S.C. 1427(d)) to achieve a staggered board, and shall commence on January 1 of the calendar year so designated by FHFA.

(c) Annual elections. Each Bank annually shall conduct an election the purpose of which is to fill all directorships designated by FHFA as commencing on January 1 of the calendar year immediately following the year in which such election is commenced. Subject to the provisions of the Bank Act and in accordance with the requirements of this subpart, the disinterested members of the board of directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process.

(d) Location of members. In accordance with section 7(c) of the Bank Act (12 U.S.C. 1427(c)), for purposes of the election of member directors, a member is deemed to be located in its voting state, unless otherwise designated by the Director.
(e) **Dates.** If any date specified in this subpart for action by a Bank, or specified by a Bank pursuant to this subpart, falls on a Saturday, Sunday, or Federal holiday, the relevant time period is deemed to be extended to the next calendar day that is not a Saturday, Sunday, or Federal holiday.


§ 1261.4 Designation of member directorships.

(a) **Capital stock reports.** (1) On or before April 10 of each year, each Bank shall deliver to FHFA a capital stock report that indicates, as of the record date, the number of members located in each voting State in the Bank’s district, the number of shares of Bank stock that each member (identified by its FHFA ID number) was required to hold, and the number of shares of Bank stock that all members located in each voting State were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of stock of all classes required to be held by the members. The Bank shall certify to FHFA that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holding requirement as of the record date.

(2) The number of shares of Bank stock that any member was required to hold as of the record date shall be determined in accordance with the minimum investment established by the capital plan for that Bank.

(b) **Designation of member directorships.** Using the method of equal proportions, the Director annually will conduct a designation of member directorships for each Bank based on the number of shares of Bank stock required to be held by the members in each State as of the record date. If a Bank has issued more than one class of stock, the Director will designate the directorships for each State in that Bank district based on the combined number of shares required to be held by the members in that State. For purposes of conducting the designation, the number of shares of Bank stock required to be held by members as of that date shall be determined in accordance with the minimum investment established by the capital plan for that Bank. In all cases, the Director will designate the directorships by using the information provided by each Bank in its capital stock report required by paragraph (a)(1) of this section.

(c) **Allocation of directorships.** The member directorships designated by the Director will be allocated among the States by the Director in accordance with section 7(b) and (c) of the Bank Act.

(d) **Notification.** On or before June 1 of each year, FHFA will notify each Bank in writing of the total number of directorships established for the Bank and the number of member directorships designated as representing the members in each voting state in the Bank district.

(e) **Change of state.** If the annual designation of member directorships results in an existing directorship being redesignated as representing members in a different State, that directorship shall be deemed to terminate in the previous State as of December 31 of that year, and a new directorship to begin in the succeeding State as of January 1 of the next year. The new directorship shall be filled by vote of the members in the succeeding State and, in order to maintain the staggered terms of directorships, shall be adjusted to a term equal to the remaining term of the previous directorship if it had not been redesignated to another State.


§ 1261.5 Director eligibility.

(a) **Eligibility requirements for member directors.** Each member director, and each nominee to a member directorship, shall be:

(1) A citizen of the United States; and

(2) An officer or director of a member that is located in the district in which the Bank is located and that meets all minimum capital requirements established by its appropriate Federal banking agency or appropriate State regulator. In the case of a director elected by the members, the institution of...
which the director is an officer or director must have been a member as of the record date. In the case of a director elected by a Bank’s board of directors to fill a vacancy, the institution of which the director is an officer or director must be a member at the time the board acts.

(b) State designation for member directors. Each member director, and each nominee to a member directorship, shall be an officer or director of a member that is located in the State to which the Director has allocated such directorship under §1261.4(c).

(c) Eligibility requirements for independent directors. Each independent director, and each nominee to an independent directorship, shall be:

(1) A citizen of the United States; and

(2) A bona fide resident of the district in which the Bank is located.

(d) Restrictions. (1) A nominee is not eligible if he or she:

(A) Is an incumbent director, unless:

(i) The incumbent director’s term of office would expire before the new term of office would begin; and

(ii) The incumbent director’s term of office would be barred by the term limit provision of section 7(d) of the Bank Act (12 U.S.C. 1427(d)); or

(b) The new term of office would not be barred by the term limit provision of section 7(d) of the Bank Act.

(2) For purposes of applying the term limit provision of section 7(d) of the Bank Act (12 U.S.C. 1427(d));

(i) A term of office that is adjusted after July 30, 2008 to a period of fewer than four years shall not be deemed to be a full term;

(ii) Any member director’s election and service to a directorship with a three-year term of office prior to July 30, 2008 shall be deemed to be a full term;

(iii) Any three-year term of office that ends immediately before a term of office that is adjusted after July 30, 2008 to a period of fewer than four years, and any term of office commencing immediately following such adjusted term of office, shall constitute consecutive full terms of office; and

(iv) Any period of time served by a director who has been elected by the board of directors to fill a vacancy shall not be deemed to constitute a full term.

(e) Loss of eligibility. A director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated. The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is eliminated.


§ 1261.6 Determination of member votes.

(a) In general. Each Bank shall determine, in accordance with this section, the number of votes that each member of the Bank may cast for each directorship that is to be filled by the vote of the members.

(b) Number of votes. For each member directorship and each independent directorship that is to be filled in an election, each member shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date. Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock required to be held as of the record date by all members located in the same State as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock, using the total number of members in a State as the denominator, and shall apply those limits separately in determining the maximum number of votes that any member owning that class of stock may cast in the election. The number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment requirement established by the Bank’s capital plan.

(c) Voting preferences. If the board of directors of a Bank includes any voting preferences as part of its approved capital plan, those preferences shall supersede the provisions of paragraph (b) of this section that otherwise would allow
§ 1261.7 Nominations for member and independent directorships.

Within a reasonable time in advance of an election, a Bank shall notify each member in its district of the commencement of the election process. Such notice shall include:

(a) Election announcement.

(1) The number of member directorships designated for each voting state in the Bank district and the number of independent directorships for the Bank;

(2) The name of each incumbent Bank director, the name and location of the member at which each member director serves, and the name and location of the organization with which each independent director is affiliated, if any, and the expiration date of each Bank director's term of office;

(3) A brief statement describing the skills and experience the Bank believes are most likely to add strength to the board of directors, provided that the Bank previously has conducted the annual assessment permitted by §1261.9 and the Bank has elected to provide the results of the assessment to the members;

(4) An attachment indicating the name, location, and FHFA ID number of every member in the member's voting state, and the number of votes each such member may cast for each directorship to be filled by such members, as determined in accordance with §1261.6; and

(5) If a member directorship is to be filled by members in a State, a nominating certificate for those members.

(b) Member directorship nominations.

(1) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available member directorship for its voting state by delivering to its Bank, prior to a deadline to be established by the Bank and set forth in the notice required in paragraph (a) of this section, a nominating certificate duly adopted by the member's governing body or by an individual authorized by the member's governing body to act on its behalf.

(2) The nominating certificate shall include the name of the nominee and the name, location, and FHFA ID number of the member the nominee serves as an officer or director.

(3) The Bank shall establish a deadline for delivery of nominating certificates, which shall be no earlier than 30 calendar days after the date on which the Bank delivers the notice required by paragraph (a) of this section, and the Bank shall not accept certificates received after that deadline. The Bank shall retain all accepted nominating certificates for at least two years after the date of the election.

(c) Accepting member directorship nominations.

Promptly after receipt of any nominating certificate, a Bank shall notify in writing any individual nominated for a member directorship. An individual may accept the nomination only by delivering to the Bank, prior to a deadline established by the Bank and set forth in its notice, an executed director eligibility certification form prescribed by FHFA. A Bank shall allow each nominee at least 30 calendar days after the date the Bank delivered the notice of nomination within which to deliver the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to deliver a properly executed director eligibility certification form prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

(d) Independent directorship nominations.

(1) Any individual who seeks to be an independent director of the board of directors of a Bank may deliver to the Bank, on or before the deadline set by the Bank for delivery of nominating
certificates, an executed independent director application form prescribed by FHFA that demonstrates that the individual both is eligible and has either of the following qualifications:

(i) More than four years of experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protections; or

(ii) Knowledge of or experience in one or more of the areas set forth in paragraph (e) of this section.

(2) Any other interested party may recommend to the Bank that it consider a particular individual as a nominee for an independent directorship, but the Bank shall not nominate any individual unless the individual has delivered to the Bank, on or before the date the Bank has set for delivery of nominating certificates, an executed independent director application form prescribed by FHFA. The application form prescribed by FHFA will provide a means by which an individual can indicate an intent to be considered for a public interest directorship. The board of directors of the Bank may consider any individual for any independent directorship nomination, provided it has determined that the individual is eligible and qualified, but the board shall nominate for a public interest directorship only an individual who indicates on the application form a desire to be considered for a public interest directorship. The board of directors of the Bank may consider any individual for any independent directorship nomination, provided it has determined that the individual is eligible and qualified, but the board shall nominate for a public interest directorship only an individual who indicates on the application form a desire to be considered for a public interest directorship. The board of directors of the Bank shall consult with the Bank’s Advisory Council before nominating any individual for any independent directorship. Each Bank shall include in its bylaws the procedures it intends to use for the nomination and election of the independent directors, and shall retain all information received under this paragraph for at least two years after the date of the election.

(3) Each Bank shall determine the number of public interest directorships to be included among its authorized independent directorships, provided that each Bank shall at all times have at least two such directorships, and shall announce that number to its members in the notice required by paragraph (a) of this section. In submitting nominations to its members, each Bank shall nominate at least as many individuals as there are independent directorships to be filled in that year’s election.

(e) Independent director qualifications.

(1) Each independent director and each nominee for an independent directorship, other than a public interest directorship, shall have experience in, or knowledge of, one or more of the following areas: auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, and the law. Before nominating any individual for an independent directorship, other than a public interest directorship, the board of directors of a Bank shall determine that such knowledge or experience of the nominee is commensurate with that needed to oversee a financial institution with a size and complexity that is comparable to that of the Bank.

(2) Each public interest independent director and each nominee for a public interest directorship shall have more than four years of experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protection.

(f) Eligibility verification.

Using the information provided on member director eligibility forms prescribed by FHFA, each Bank shall verify that each nominee for each member directorship meets all the eligibility requirements for such directorship. Using the information provided on independent director application forms prescribed by FHFA, each Bank shall verify that each nominee for each public interest independent directorship and each other independent directorship meets all eligibility requirements and any knowledge or experience qualifications for such directorship, as set forth in the Bank Act and this subpart. Before announcing any independent director nominee, the Bank shall deliver to FHFA, for the Director’s review, a copy of the independent director application forms executed by the individuals nominated for independent directorships. If within two weeks of such delivery FHFA provides comments to the Bank on any independent director nominee, the board of directors of the Bank shall...
§ 1261.8 Election process.

(a) Ballots. Promptly after fulfilling the requirements of §1261.7(f), each Bank shall prepare and deliver a ballot to each member that was a member as of the record date. The Bank shall include with each ballot a closing date for the Bank’s receipt of voted ballots, which date shall be no earlier than 30 calendar days after the date such ballot is delivered to the member.

(1) A ballot shall include at least the following provisions:

(i) For states in which one or more member directorships are to be filled in the election, an alphabetical listing of the names of each nominee for such directorship, the name, location, and FHFA ID number of the member each nominee serves, the nominee’s title or position with the member, and the number of member directorships to be filled by the members in that voting state in the election;

(ii) An alphabetical listing of the names of each nominee for a public interest independent directorship and a brief description of each nominee’s experience representing consumer and community interests;

(iii) An alphabetical listing of the names of each nominee for the other independent directorships and a brief description of each nominee’s qualifications, including his or her knowledge or experience in the areas of financial management, auditing and accounting, risk management practices, derivatives, project development, organizational management, and any other area of knowledge or experience set forth in §1261.7(e);

(iv) A statement that write-in candidates are not permitted; and

(v) A confidentiality statement prohibiting the Bank from disclosing how any member voted.

(2) At the election of the Bank, a ballot also may include, in the body or as an attachment, a brief description of the skills and experience of each nominee for a member directorship.

(b) Statement on skills and experience. If a Bank has conducted an annual assessment permitted by §1261.9 and has included the results of the assessment as part of the notice to members required in §1261.7(a), it may include with each ballot a statement of the results of that assessment or any subsequent assessment. If the statement differs from the statement provided under §1261.7(a)(3), the Bank also shall include an explanation of why the statements differ.

(c) Lack of member directorship nominees. If, for any voting State, the number of nominees for the member directorships for that State is equal to or fewer than the number of such directorships to be filled in that year’s election, the Bank shall deliver a notice to the members in the affected voting State (in lieu of including any member directorship nominees on the ballot for that State) that such nominees shall be deemed elected without further action, due to an insufficient number of nominees to warrant balloting. Thereafter, the Bank shall declare elected all such eligible nominees. The nominees declared elected shall be included as directors-elect in the report of election required under paragraph (g) of this section. Any member directorship that is not filled due to a lack of nominees shall be deemed vacant as of January 1 of the following year and shall be filled by the Bank’s board of directors in accordance with §1261.14(a).

(d) Voting. For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to §1261.6. A member may not split its votes among multiple nominees for a single directorship, and, where there are multiple directorships to be filled, either within the member’s voting state or at large, in the case of independent directorships, a member may not cumulatively vote for a single nominee. If any member votes, it shall by resolution of its governing body either authorize the voting for specific nominees or delegate to an individual the authority to vote for specific nominees. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for
each directorship to be filled. Each nominee so selected shall receive all of the votes that the member is entitled to cast.

(2) Execute and deliver the ballot to the Bank on or before the closing date. A Bank shall not allow a member to change a ballot after it has been delivered to the Bank.

(e) Counting ballots. A Bank shall not review any ballot until after the closing date, and shall not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate the votes cast in the election: for the member directorships, the Bank shall tabulate votes for each voting state; for the independent directorships, the Bank shall tabulate votes for the district at-large. Any ballots cast in violation of paragraph (d) of this section shall be void.

(f) Declaring results—(1) For member directorships. The Bank shall declare elected the nominee receiving the highest number of votes. If more than one member directorship is to be filled for a particular State, the Bank shall declare elected each successive nominee receiving the next highest number of votes until all such open directorships are filled.

(2) For independent directorships. (i) The Bank shall tabulate separately the votes received for public interest independent director nominees and those received for other independent director nominees, in each case in accordance with paragraph (f)(2)(ii) of this section.

(ii) If the number of nominees exceeds the number of directorships to be filled, the Bank shall declare elected the nominee receiving the highest number of votes. If more than one directorship is to be filled, the Bank shall declare elected each successive nominee receiving the next highest number of votes for such directorship until all such open directorships are filled.

(iii) If the number of nominees is no more than the number of directorships to be filled, the Bank shall declare elected each nominee receiving at least 20 percent of the number of votes eligible to be cast in the election. If any directorship is not filled due to any nominee’s failure to receive at least 20 percent of the votes eligible to be cast, the Bank shall continue the election process for that directorship under the procedures in paragraph (h) of this section.

(3) Tie votes. In the event of a tie for the last available directorship, the disinterested incumbent members of the board of directors of the Bank, by a majority vote, shall declare elected one of the nominees for whom the number of votes cast was tied.

(4) Eligibility. A Bank shall not declare elected a nominee that it has reason to know is ineligible to serve, nor shall it seat a director-elect that it has reason to know is ineligible to serve.

(5) Record retention. The Bank shall retain all ballots it receives for at least two years after the date of the election, and shall not disclose how any member voted.

(g) Report of election. Promptly following the election, each Bank shall deliver a notice to its members, to each nominee, and to FHFA that contains the following information:

(1) For each member directorship, the name of the director-elect, the name and location of the member at which he or she serves, his or her title or position at the member, the voting State represented, and the expiration date of the term of office;

(2) For each independent directorship, the name of the director-elect, whether the director-elect will fill a public interest directorship and, if so, the consumer or community interest represented by such directorship, any qualifications under §1261.7(e), and the expiration date of the term of office;

(3) For member directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported by State; and

(4) For independent directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported for the district at large.

(h) Failure to fill all independent directorships. If any independent directorship is not filled due to the failure of any nominee to receive at least 20 percent of the eligible vote, the Bank shall
continue the election process for that directorship under the following procedures:

(1) The Bank’s board of directors, after again consulting with the Bank’s Advisory Council, shall nominate at least as many individuals as there are independent directorships to be filled. It may nominate individuals who failed to be elected in the initial vote. The Bank thereafter shall deliver to FHFA a copy of the independent director application form executed by each nominee.

(2) The Bank then shall follow the provisions in this section that are applicable to the election process for independent directors, except for the following:

(i) The Bank shall not place the name of any nominee on a ballot without prior approval of FHFA; and

(ii) The Bank may adopt a closing date that is earlier than 30 calendar days after delivery of the ballots to the eligible voting members, provided the Bank determines that an earlier closing date provides a reasonable amount of time to vote the ballots.


§ 1261.9 Actions affecting director elections.

(a) Banks. Each Bank, acting through its board of directors, may conduct an annual assessment of the skills and experience possessed by the members of its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of individuals with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of individuals with particular qualifications, such as auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, or the law, it may identify those qualifications and so inform the members as part of its announcement of elections pursuant to §1261.7(a).

(b) Support for nomination or election.

(1) A Bank director, officer, attorney, employee, or agent, acting in his or her personal capacity, may support the nomination or election of any individual for a member directorship, provided that no such individual shall purport to represent the views of the Bank or its board of directors in doing so.

(2) A Bank director, officer, attorney, employee or agent and the board of directors and Advisory Council (including members of the Council) of a Bank may support the candidacy of any individual nominated by the board of directors for election to an independent directorship.

(c) Prohibition. Except as provided in paragraphs (a) and (b) of this section, or §1207.21(b)(5) of this chapter, no director, officer, attorney, employee, or agent of a Bank shall:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports or opposes the nomination or election of a particular individual; or

(2) Take any other action to influence the voting with respect to any particular individual.


§ 1261.10 Independent director conflict of interests.

(a) Employment interests. During any independent director’s term of service, such director shall not serve as an officer, employee, or director of any member of the Bank on whose board the individual sits, or of any recipient of advances from such Bank, and shall not serve as an officer of any Bank. An independent director or nominee for any independent directorship shall disclose all such interests to the Bank on whose board of directors the individual serves or which is considering the individual for nomination to its board of directors.

(b) Holding companies. Service as an officer, employee, or director of a holding company that controls one or more members of, or one or more recipients of advances from, the Bank on whose board an independent director serves is not deemed to be service as an officer, employee or director of a member or recipient of advances if the assets of all
such members or all such recipients of advances constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

(c) Attribution. For purposes of determining compliance with this section, a Bank shall attribute to the independent director any officer position, employee position, or directorship of the director’s spouse.


§ 1261.11 Conflict-of-interests policy for Bank directors.

(a) Adoption of conflict-of-interests policy. Each Bank shall adopt a written conflict-of-interests policy that applies to all members of its board of directors. At a minimum, the conflict-of-interests policy of each Bank shall:

(1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member;
(2) Require independent directors to comply with §1261.10(a);
(3) Prohibit the use of a director’s official position for personal gain;
(4) Require directors to disclose actual or apparent conflicts of interests and establish procedures for addressing such conflicts;
(5) Require the establishment of internal controls to ensure that conflict-of-interests reports are made and filed and that conflict-of-interests issues are disclosed and resolved; and
(6) Establish procedures to monitor compliance with the conflict-of-interests policy.

(b) Disclosure and recusal. A director shall disclose to the Bank’s board of directors any financial interests he or she has, as well as any financial interests known to the director of any immediate family member or business associate of the director, in any matter to be considered by the Bank’s board of directors and in any other business matter or proposed business matter involving the Bank and any other person or entity. A director shall disclose fully the nature of his or her interests in the matter and shall provide to the Bank’s board of directors any information requested to aid in its consideration of the director’s interest. A director shall refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has any financial interest.

(c) Confidential Information. Directors shall not disclose or use confidential information they receive solely by reason of their position with the Bank to obtain any benefit for themselves or for any other individual or entity.

(d) Gifts. No Bank director shall accept, and each Bank director shall discourage the director’s immediate family members from accepting, any gift that the director believes or has reason to believe is given with the intent to influence the director’s actions as a member of the Bank’s board of directors, or where acceptance of such gift would have the appearance of intending to influence the director’s actions as a member of the board. Any insubstantial gift would not be expected to trigger this prohibition.

(e) Compensation. Directors shall not accept compensation for services performed for the Bank from any source other than the Bank for which the services are performed.

(f) Definitions. For purposes of this section:

(1) Immediate family member means parent, sibling, spouse, child, or dependent, or any relative sharing the same residence as the director.

(2) Financial interest means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account maintained with a member, nor does it include a loan or extension of credit obtained from a member in the normal course of business on terms that are available generally to the public.

(3) Business associate means any individual or entity with whom a director has a business relationship, including, but not limited to:

(1) Any corporation or organization of which the director is an officer or partner, or in which the director beneficially owns ten percent or more of
any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which a director has a substantial beneficial interest or as to which the director serves as trustee or in a similar fiduciary capacity.


§ 1261.12 Reporting requirements for Bank directors.

(a) Annual reporting. Annually, each Bank shall require each of its directors to execute and deliver to the Bank the appropriate director eligibility certification form prescribed by FHFA for the type of directorship held by such director. The Bank promptly shall deliver to FHFA a copy of the certification form delivered to it by each director.

(b) Report of noncompliance. At any time that any director believes or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Bank Act or this subpart, the director promptly shall notify the Bank and FHFA in writing. At any time that a Bank believes or has reason to believe that any director no longer meets the eligibility requirements set forth in the Bank Act or this subpart, the Bank promptly shall notify FHFA in writing.

[74 FR 51463, Oct. 7, 2009]

§ 1261.13 Ineligible Bank directors.

Upon a determination by FHFA or a Bank that any director of the Bank no longer satisfies the eligibility requirements set forth in the Bank Act or this subpart, or has failed to comply with the reporting requirements of §1261.12, the directorship shall immediately become vacant. Any director that is determined to have failed to comply with any of these requirements shall not continue to serve as a Bank director. Whenever a Bank makes such a determination, the Bank promptly shall notify the Bank director and FHFA in writing.


§ 1261.14 Vacant Bank directorships.

(a) Filling unexpired terms. (1) When a vacancy occurs on the board of directors of any Bank, the board of directors of the Bank shall elect, by a majority vote of the remaining Bank directors sitting as a board, an individual to fill the unexpired term of office of the vacant directorship, regardless of whether the remaining Bank directors constitute a quorum of the Bank’s board of directors.

(2) The board of directors of the Bank may fill an anticipated vacancy prior to the effective date of the vacancy, provided the board does so no sooner than the date of the regularly scheduled board meeting that occurs immediately prior to the effective date of the vacancy.

(3) The board of directors shall elect only an individual who satisfies all the eligibility requirements in the Bank Act and in this subpart that applied to his or her predecessor and, for independent directorships, also satisfies any of the qualifications in the Bank Act or this subpart. If a Bank does not have at least two sitting public interest independent directors, the board of directors of the Bank shall designate the directorship as a public interest directorship and shall elect an individual who satisfies a public interest independent directorship qualification in the Bank Act or in this subpart.

(b) Verifying eligibility. Prior to any election by the board of directors, the Bank shall obtain an executed member director eligibility certification form prescribed by FHFA from each individual being considered to fill a member directorship and an executed independent director application form prescribed by FHFA from each individual being considered to fill an independent directorship. Using the executed forms, each Bank shall verify each individual’s eligibility and, as to independent directors, also shall verify the individual’s qualifications. Before any independent director is elected by the board of directors of a Bank, the Bank shall deliver to FHFA for its review a
§ 1261.21

(c) Notification. Promptly after allowing the individual to assume the directorship, as provided in paragraph (b) of this section, a Bank shall notify FHFA and each member located in the Bank’s district in writing of the following:

(1) For each member directorship filled by the board of a Bank, the name of the director, the name, location, and FHFA ID number of the member the director serves, the director’s title or position with the member, the voting State that the director represents, and the expiration date of the director’s term of office; and

(2) For each independent directorship filled by the board of a Bank, the name of the director, the name and location of the organization with which the director is affiliated, if any, the director’s title or position with such organization, and the expiration date of the director’s term of office.

§ 1261.15 Minimum number of member directorships.

Except with respect to member directorships of a Bank resulting from the merger of any two or more Banks, the number of member directorships allocated to each state shall not be less than the number of directorships allocated to that state on December 31, 1960. The following table sets forth the states within Bank districts not created from the merger of two or more Banks whose members held more than one directorship on December 31, 1960:

<table>
<thead>
<tr>
<th>State</th>
<th>Number of elective directorships on December 31, 1960</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>3</td>
</tr>
<tr>
<td>Colorado</td>
<td>2</td>
</tr>
<tr>
<td>Illinois</td>
<td>4</td>
</tr>
<tr>
<td>Indiana</td>
<td>5</td>
</tr>
<tr>
<td>Kansas</td>
<td>3</td>
</tr>
<tr>
<td>Kentucky</td>
<td>2</td>
</tr>
<tr>
<td>Louisiana</td>
<td>2</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>3</td>
</tr>
<tr>
<td>Michigan</td>
<td>3</td>
</tr>
<tr>
<td>New Jersey</td>
<td>4</td>
</tr>
<tr>
<td>New York</td>
<td>4</td>
</tr>
<tr>
<td>Ohio</td>
<td>4</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>2</td>
</tr>
</tbody>
</table>

§ 1261.20 Definitions.

(a) Standard. Each Bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, as determined by a resolution adopted by the board of directors of the Bank and subject to the provisions of this subpart.

(b) Reporting—(1) Following calendar year. By December 31 of each calendar year, each Bank shall report to the Director the compensation it anticipates paying to its directors for the following calendar year.

(2) Preceding calendar year. No later than the tenth business day of each calendar year, each Bank shall report to the Director the following information relating to director compensation, expenses and meeting attendance for.
§ 1261.22 Directors’ compensation policy.

(a) General. Each Bank’s board of directors annually shall adopt a written compensation policy to provide for the payment of reasonable compensation and expenses to the directors for the time required of them in performing their duties as directors. Payments under the directors’ compensation policy may be based on any factors that the board of directors determines reasonably to be appropriate, subject to the requirements in this subpart.

(b) Minimum contents. The compensation policy shall address the activities or functions for which director attendance or participation is necessary and which may be compensated, and shall explain and justify the methodology used to determine the amount of compensation to be paid to the Bank directors. The compensation policy shall require that any compensation paid to a director reflect the amount of time the director has spent on official Bank business, and shall require that compensation be reduced, as necessary to reflect lesser attendance or performance at board or committee meetings during a given year.

(c) Prohibited payments. A Bank shall not pay a director who regularly fails to attend board or committee meetings, and shall not pay fees to a director that do not reflect the director’s performance of official Bank business conducted prior to the payment of such fees.

(d) Submission requirements. No later than the tenth business day after adopting its annual policy for director compensation and expenses, and at least 30 days prior to disbursing the first payment to any director, each Bank shall submit to the Director a copy of the policy, along with all studies or other supporting materials upon which the board relied in determining the level of compensation and expenses to pay to its directors.

§ 1261.23 Director disapproval.

The Director may determine, based upon his or her review of a Bank’s director compensation policy, methodology and/or other related materials, that the compensation and/or expenses to be paid to the directors are not reasonable. In such case, the Director may order the Bank to refrain from making any further payments under that compensation policy. Any such order shall apply prospectively only and will not affect either compensation or expenses that have been earned but not yet paid or reimbursed or payments that had been made prior to the date of the Director’s determination and order.

§ 1261.24 Board meetings.

(a) Number of meetings. The board of directors of each Bank shall hold as many meetings each year as necessary and appropriate to carry out its fiduciary responsibilities with respect to the effective oversight of Bank management and such other duties and obligations as may be imposed by applicable laws, provided the board of directors of a Bank must hold a minimum of six in-person meetings in any year.

(b) Site of meetings. The bank usually should hold board of director and committee meetings within the district served by the Bank. The Bank shall not hold board of director or committee meetings in any location that is not within the United States, including its possessions and territories.

Subpart D [Reserved]
Federal Housing Finance Agency

PART 1263—MEMBERS OF THE BANKS

Subpart A—Definitions

Sec. 1263.1 Definitions.

1263.1 Definitions.

Subpart B—Membership Application Process

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Subpart F—Other Membership Provisions

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Source: 81 FR 3277, Jan. 20, 2016, unless otherwise noted.

Subpart A—Definitions

§ 1263.1 Definitions.

For purposes of this part:

Adjusted net income means net income, excluding extraordinary items such as income received from, or expense incurred in, sales of securities or fixed assets, reported on a regulatory financial report.

Affiliate means any entity that controls, is controlled by, or is under common control with another entity. For purposes of this definition, one entity controls another if it:

(1) Directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote twenty-five (25) percent or more of the outstanding shares of any class of voting securities of the other entity, including shares of common or preferred stock, general or limited partnership shares or interests, or similar interests that entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or individuals exercising similar functions) of that entity; or

(ii) To vote on or to direct the conduct of the operations or other significant policies of that entity;

(2) Controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other entity; or

(3) Otherwise has the power to exercise, directly or indirectly, a controlling influence over the management or policies of the other entity through a management agreement, common directors or management officials, or by any other means.

Aggregate unpaid loan principal means the aggregate unpaid principal of a subscriber’s or member’s home mortgage loans, home-purchase contracts and similar obligations.
Allowance for loan and lease losses means a specified balance-sheet account held to fund potential losses on loans or leases, which is reported on a regulatory financial report.

Appropriate regulator means:
(1) In the case of an insured depository institution or a CDFI credit union, an appropriate Federal banking agency or appropriate State regulator, as applicable; or
(2) In the case of an insurance company, an appropriate State regulator accredited by the NAIC.

Captive means an entity that holds an insurance license or charter under the laws of a State, but that does not meet the definition of “insurance company” set forth in this section or fall within any other category of institution that may be eligible for membership.

CDFI credit union means a State-chartered credit union that has been certified as a CDFI by the CDFI Fund and that does not have federal share insurance.

CDFI Fund means the Community Development Financial Institutions Fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(a)).

CFI asset cap means $1 billion, as adjusted annually by FHFA, beginning in 2009, to reflect any percentage increase in the preceding year’s Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(i) of the Bank Act (12 U.S.C. 1429(a)(4)(A)(i)) and applicable FHFA regulations.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(ii) of the Bank Act (12 U.S.C. 1429(a)(4)(A)(ii)) and applicable FHFA regulations.

Combination business or farm property means real property for which the total appraised value is attributable to residential, and business or farm uses.

Community development financial institution or CDFI means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.), other than a bank or savings association insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), a holding company for such a bank or savings association, or a credit union insured under the Federal Credit Union Act (12 U.S.C. 1751 et seq.).

Community financial institution or CFI means an institution:
(1) The deposits of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.); and
(2) The total assets of which, as of the date of a particular transaction, are less than the CFI asset cap, with total assets being calculated as an average of total assets over three years, with such average being based on the institution’s regulatory financial reports filed with its appropriate regulator for the most recent calendar quarter and the immediately preceding 11 calendar quarters.

Composite regulatory examination rating means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Ratings System (issued by the Federal Financial Institutions Examination Council), including a CAMELS rating or other similar rating, contained in a written regulatory examination report.

Consolidation means a combination of two or more business entities, and includes a consolidation of two or more entities into a new entity, a merger of one or more entities into another entity, or a purchase of substantially all of the assets and assumption of substantially all of the liabilities of an entity by another entity.


CRA performance evaluation means, unless otherwise specified, a formal performance evaluation of an institution prepared by its appropriate regulator as required by the CRA or, if such a formal evaluation is unavailable for a particular institution, an informal or preliminary evaluation.
De novo insured depository institution means an insured depository institution with a charter approved by its appropriate regulator within the three years prior to the date the institution applies for Bank membership.

Dwelling unit means a single room or a unified combination of rooms designed for residential use.

Enforcement action means any written notice, directive, order, or agreement initiated by an applicant for Bank membership or by its appropriate regulator to address any operational, financial, managerial, or other deficiencies of the applicant identified by such regulator. An “enforcement action” does not include a board of directors’ resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

Funded residential construction loan means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

Gross revenues means, in the case of a CDFI applicant, total revenues received from all sources, including grants and other donor contributions and earnings from operations.

Home mortgage loan means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property, where at least fifty (50) percent of the total appraised value of the combined property is attributable to the residential portion of the property, or in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property; or

(2) A security representing:

(i) A right to receive a portion of the cash flows from a pool of long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition; or

(ii) An interest in other securities, all of which meet the requirements of paragraph (2)(i) of this definition.

Insurance company means an entity that holds an insurance license or charter under the laws of a State and whose primary business is the underwriting of insurance for persons or entities that are not its affiliates.

Insured depository institution means an insured depository institution as defined in section 2(9) of the Bank Act, as amended (12 U.S.C. 1422(9)).

Long-term means a term to maturity of five years or greater at the time of originiation.

Manufactured housing means a manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Multifamily property means:

(1) Real property that is solely residential and includes five or more dwelling units;

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

NAIC means the National Association of Insurance Commissioners.

Nonperforming loans and leases means the sum of the following, reported on a regulatory financial report:

(1) Loans and leases that have been past due for 90 days (60 days, in the case of credit union applicants) or longer but are still accruing;

(2) Loans and leases on a nonaccrual basis; and

(3) Restructured loans and leases (not already reported as nonperforming).

Nonresidential real property means real property that is not used for residential purposes, including business or industrial property, hotels, motels,
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churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

One-to-four family property means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses, or similar types of property;

(2) Manufactured housing if applicable State law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

Operating expenses means, in the case of a CDFI applicant, expenses for business operations, including, but not limited to, staff salaries and benefits, professional fees, interest, loan loss provision, and depreciation, contained in the applicant’s audited financial statements.

Other real estate owned means all other real estate owned (i.e., foreclosed and repossessed real estate), reported on a regulatory financial report, and does not include direct and indirect investments in real estate ventures.

Regulatory examination report means a written report of examination prepared by the applicant’s appropriate regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMELS rating or other similar rating.

Regulatory financial report means a financial report that an applicant is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks and savings associations, quarterly or semi-annual call report for credit unions, NAIC’s annual or quarterly statement for insurance companies, or other similar report, including such report maintained by the appropriate regulator in an electronic database.

Residential mortgage loan means any one of the following types of loans, whether or not fully amortizing:

(1) A home mortgage loan;

(2) A funded residential construction loan;

(3) A loan secured by manufactured housing whether or not defined by State law as secured by an interest in real property;

(4) A loan secured by a junior lien on one-to-four family property or multifamily property;

(5) A security representing:

(i) A right to receive a portion of the cash flows from a pool of loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of one of paragraphs (1) through (4) of this definition; or

(ii) An interest in other securities that meet the requirements of paragraph (5)(i) of this definition;

(6) A home mortgage loan secured by a leasehold interest, as defined in paragraph (1)(ii) of the definition of “home mortgage loan,” except that the period of the lease term may be for any duration; or

(7) A loan that finances one or more properties or activities that, if made by a member, would satisfy the statutory requirements for the Community Investment Program established under section 10(i) of the Bank Act (12 U.S.C. 1430(i)), or the regulatory requirements established for any Community Investment Cash Advance program.

Restricted assets means both permanently restricted assets and temporarily restricted assets, as those terms are used in Financial Accounting Standard No. 117, or any successor publication.

Total assets means the total assets reported on a regulatory financial report or, in the case of a CDFI applicant, the total assets contained in the applicant’s audited financial statements.
Unrestricted cash and cash equivalents means, in the case of a CDFI applicant, cash and highly liquid assets that can be easily converted into cash that are not restricted in a manner that prevents their use in paying expenses, as contained in the applicant’s audited financial statements.

Subpart B—Membership Application Process

§ 1263.2 Membership application requirements.

(a) Application. Except as otherwise specified in this part, no institution may become a member of a Bank unless it has submitted to that Bank an application that satisfies the requirements of this part. The application shall include a written resolution or certification duly adopted by the applicant’s board of directors, or by an individual with authority to act on behalf of the applicant’s board of directors, of the following:

(1) Applicant review. The applicant has reviewed the requirements of this part and, as required by this part, has provided to the best of its knowledge the most recent, accurate, and complete information available; and

(2) Duty to supplement. The applicant will promptly supplement the application with any relevant information that comes to its attention prior to the Bank’s decision on whether to approve or deny the application, and if the Bank’s decision is appealed pursuant to §1263.5, prior to resolution of any appeal by FHFA.

(b) Digest. The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§1263.6 to 1263.18, the Bank’s findings, and the reasons therefor. In preparing a digest for an applicant whose satisfaction of the membership eligibility requirements of §1263.6(a) is contingent upon its meeting the definition of “insurance company” set forth in §1263.1, the Bank shall state its conclusion as to whether the applicant meets that definition and summarize the bases for that conclusion.

(c) File. The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve or deny membership or, in the case of an appeal to FHFA, for three years after the resolution of the appeal. The membership file shall contain at a minimum:

(1) Digest. The digest required by paragraph (b) of this section.

(2) Required documents. All documents required by §§1263.6 to 1263.18, including documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. The Bank is not required to retain in the file portions of regulatory financial reports that are not relevant to its decision on the membership application. If an applicant’s appropriate regulator requires return or destruction of a regulatory examination report, the date that the report is returned or destroyed shall be noted in the file.

(3) Additional documents. Any additional document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) Decision resolution. The decision resolution described in §1263.3(b).

§ 1263.3 Decision on application.

(a) Authority. FHFA hereby authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The authority to approve membership applications may be exercised only by a committee of the Bank’s board of directors, the Bank president, or a senior officer who reports directly to the Bank president, other than an officer with responsibility for business development.

(b) Decision resolution. For each applicant, the Bank shall prepare a written resolution duly adopted by the Bank’s board of directors, by a committee of the board of directors, or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the statements in the digest are accurate to the best of the Bank’s knowledge, and are based on a diligent and comprehensive review of all available information identified in the digest; and

(2) The Bank’s decision and the reasons therefor. Decisions to approve an
application should state specifically that:

(i) The applicant is authorized under the laws of the United States and the laws of the appropriate State to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied; and

(ii) The applicant meets all of the membership eligibility criteria of the Bank Act and this part.

(c) Action on applications. The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. An application is “complete” when a Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application. If an application that was deemed complete subsequently is deemed incomplete because the Bank determines during the review process that additional information is necessary to process the application, the Bank may suspend the 60-day processing period until the Bank again deems the application to be complete, at which time the processing period shall resume. The Bank shall notify an applicant in writing when it deems the applicant’s application to be complete, and shall maintain a copy of the notice in the applicant’s membership file. The Bank shall notify an applicant whenever it suspends or resumes the 60-day processing period, and shall maintain a written record of those notifications in the applicant’s membership file. Within three business days of a Bank’s decision on an application, the Bank shall provide the applicant and FHFA with a copy of the Bank’s decision resolution.

§ 1263.4 Automatic membership.

(a) Automatic membership for certain charter conversions. An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of the conversion, provided that the conversion is not materially different. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(b) Automatic membership for transfers. Any member that relocates its principal place of business to another Bank district or that redesignates its principal place of business to another Bank district pursuant to §1263.18(c) automatically shall become a member of the Bank of that district upon the purchase of the minimum amount of Bank stock required for membership in that Bank, as required by §1263.20.

(c) Automatic membership, in the Bank’s discretion, for certain consolidations. (1) If a member institution (or institutions) and a nonmember institution or institutions are consolidated, and the consolidated institution has its principal place of business in a State in the same Bank district as the disappearing institution (or institutions), and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution may, in the discretion of the Bank of which the disappearing institution (or institutions) was a member immediately prior to the effective date of the consolidation, automatically become a member of such Bank upon the purchase of the minimum amount of Bank stock required for membership in that Bank, as required by §1263.20, provided that:

(i) 90 percent or more of the consolidated institution’s total assets are derived from the total assets of the disappearing member institution (or institutions); and

(ii) The consolidated institution provides written notice to such Bank, within 60 calendar days after the effective date of the consolidation, that it desires to be a member of the Bank.

(2) The provisions of §1263.24(b)(4)(i) shall apply, and upon approval of automatic membership by the Bank, the provisions of §1263.24(c) shall apply.

§ 1263.5 Appeals.

(a) Appeals by applicants.—(1) Filing procedure. Within 90 calendar days of the date of a Bank’s decision to deny
Federal Housing Finance Agency

§ 1263.6 General eligibility requirements.

(a) Requirements. Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community development financial institution (including a CDFI credit union), or insured depository institution shall be eligible for Bank membership if:

(1) It is duly organized under tribal law, or under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States or, in the case of a CDFI, is certified by the CDFI Fund;

(3) It makes long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it;

(5) The character of its management is consistent with sound and economical home financing;

(6) Its home financing policy is consistent with sound and economical home financing;

(7) It has complied with any applicable requirement of paragraphs (b) and (c) of this section.

(b) Additional eligibility requirement for insured depository institutions other than community financial institutions. In order to be eligible to become a member of a Bank, an insured depository institution applicant other than a community financial institution also must have at least 10 percent of its total assets in residential mortgage loans.

(c) Additional eligibility requirement for applicants that are not insured depository institutions. In order to be eligible to become a member of a Bank, an applicant that is not an insured depository institution also must have mortgage-related assets that reflect a commitment to housing finance, as determined by the Bank in its discretion.

(d) Ineligibility. Except as provided in paragraph (e) of this section, an institution that does not satisfy the requirements of this part shall be ineligible for membership.

(e) Treatment of captives previously admitted to membership. A Bank that admitted one or more captives to membership prior to February 19, 2016 shall wind down its relationship with, and terminate the membership of, each of those captives as provided in this paragraph (e).

(1) Captives admitted prior to September 12, 2014.—(i) A Bank shall have until
February 19, 2021 to wind down its business transactions with any captive that it had admitted to membership prior to September 12, 2014, notwithstanding the captive’s ineligibility for Bank membership. The Bank may make or renew an advance to such a captive only if:

(A) After making or renewing the advance, its total outstanding advances to that captive would not exceed 40 percent of the captive’s total assets; and

(B) The new or renewed advance has a maturity date no later than February 19, 2021.

(ii) A Bank shall terminate the membership of any captive described in paragraph (e)(1)(i) of this section no later than February 19, 2021, as provided under §1263.27. After termination, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, such terminated captive, and shall redeem or repurchase the Bank stock owned by the captive in accordance with §1263.29; provided that all advances outstanding to that member must be repaid in full by the termination date.

§ 1263.7 Duly organized requirement.

An applicant shall be deemed to be duly organized, as required by section 4(a)(1)(A) of the Bank Act (12 U.S.C. 1424(a)(1)(A)) and §1263.6(a)(1), if it is chartered by a State or federal agency as a building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution or, in the case of a CDFI applicant, is incorporated under State or tribal law.

§ 1263.8 Subject to inspection and regulation requirement.

An applicant shall be deemed to be subject to inspection and regulation, as required by section 4(a)(1)(B) of the Bank Act (12 U.S.C. 1424(a)(1)(B)) and §1263.6(a)(2) if, in the case of an insured depository institution or insurance company applicant, it is subject to inspection and regulation by its appropriate regulator. A CDFI applicant that is certified by the CDFI Fund is not subject to this requirement.

§ 1263.9 Makes long-term home mortgage loans requirement.

An applicant shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and §1263.6(a)(3), if, based on the applicant’s most recent regulatory financial report filed with its appropriate regulator, or other documentation provided to the Bank, in the case of a CDFI applicant that does not file such reports, the applicant originates or purchases long-term home mortgage loans.

§ 1263.10 Ten percent requirement for certain insured depository institution applicants.

An insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and §1263.6(b) shall be deemed to comply
with that requirement if, based on the applicant’s most recent regulatory financial report filed with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage-backed securities as described in paragraph (5) of the definition of “residential mortgage loan” set forth in §1263.1 shall not be used to meet this requirement.

§ 1263.11 Financial condition requirement for depository institutions and CDFI credit unions.

(a) Review requirement. In determining whether a building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, or CDFI credit union has complied with the financial condition requirements of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and §1263.6(a)(4), the Bank shall obtain as a part of the membership application and review each of the following documents:

(1) Regulatory financial reports. The regulatory financial reports filed by the applicant with its appropriate regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application;

(2) Financial statement. In order of preference—

(i) The most recent independent audit of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the applicant;

(ii) The most recent independent audit of the applicant’s parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company but not on the applicant separately;

(iii) The most recent directors’ examination of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm;

(iv) The most recent directors’ examination of the applicant performed by other external auditors;

(v) The most recent review of the applicant’s financial statements by external auditors;

(vi) The most recent compilation of the applicant’s financial statements by external auditors; or

(vii) The most recent audit of other procedures of the applicant.

(3) Regulatory examination report. The applicant’s most recent available regulatory examination report prepared by its appropriate regulator, a summary prepared by the Bank of the applicant’s strengths and weaknesses as cited in the regulatory examination report, and a summary prepared by the Bank or applicant of actions taken by the applicant to respond to examination weaknesses;

(4) Enforcement actions. A description prepared by the Bank or applicant of any outstanding enforcement actions against the applicant, responses by the applicant, reports as required by the enforcement action, and verbal or written indications, if available, from the appropriate regulator of how the applicant is complying with the terms of the enforcement action; and

(5) Additional information. Any other relevant document or information concerning the applicant that comes to the Bank’s attention in reviewing the applicant’s financial condition.

(b) Standards. An applicant of the type described in paragraph (a) of this section shall be deemed to be in compliance with the financial condition requirements of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and §1263.6(a)(4), if:

(1) Recent composite regulatory examination rating. The applicant has received a composite regulatory examination rating from its appropriate regulator within two years preceding the date the Bank receives the application;

(2) Capital requirement. The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report filed with its appropriate regulator; and

(3) Minimum performance standard—(i) Except as provided in paragraph (b)(3)(i) of this section, the applicant’s most recent composite regulatory examination rating from its appropriate regulator within the past two
years was “1”, or the most recent rating was “2” or “3” and, based on the applicant’s most recent regulatory financial report filed with its appropriate regulator, the applicant satisfied all of the following performance trend criteria—

(A) Earnings. The applicant’s adjusted net income was positive in four of the six most recent calendar quarters;

(B) Nonperforming assets. The applicant’s nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and

(C) Allowance for loan and lease losses. The applicant’s ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during four of the six most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their appropriate regulator on a quarterly basis, the information required in paragraph (b)(3)(i) of this section may be reported on a semi-annual basis.

(iii) A CDFI credit union applicant must meet the performance trend criteria in paragraph (b)(3)(i) of this section irrespective of its composite regulatory examination rating.

§ 1263.12 Character of management requirement.

(a) General. A building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, insurance company, and CDFI credit union shall be deemed to be in compliance with the character of management requirements of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and §1263.6(a)(4).

(b) CDFIs other than CDFI credit unions. A CDFI applicant, other than a CDFI credit union, shall be deemed to be in compliance with the character of management requirement of §1263.6(a)(5), if the applicant provides an unqualified written certification duly adopted by the applicant’s board of directors, or by an individual with authority to act on behalf of the applicant’s board of directors, that:

(1) Enforcement actions. Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator;

(2) Criminal, civil or administrative proceedings. Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report; and

(3) Criminal, civil or administrative monetary liabilities, lawsuits or judgments. There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant’s operations.

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§ 1263.13 Home financing policy requirement.

(a) Standard. An applicant shall be deemed to be in compliance with the home financing policy requirements of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6), if the applicant has received a CRA rating of “Satisfactory” or better on its most recent CRA performance evaluation.

(b) Written justification required. An applicant that is not subject to the CRA shall file, as part of its application for membership, a written justification acceptable to the Bank of how and why the applicant’s home financing policy is consistent with the Bank System’s housing finance mission.

§ 1263.14 De novo insured depository institution applicants.

(a) Presumptive compliance. A de novo insured depository institution applicant shall be deemed to meet the duly organized, subject to inspection and regulation, financial condition, and character of management requirements of §§ 1263.7, 1263.8, 1263.11 and 1263.12, respectively.

(b) Makes long-term home mortgage loans requirement. A de novo insured depository institution applicant shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and §1263.6(a)(3), if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(c) 10 percent requirement.—(1) Conditional approval. If a de novo insured depository institution applicant that commenced its initial business operations less than one year before applying for Bank membership is subject to, but cannot yet meet, the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and §1263.6(a)(6), if it has filed as part of its application for membership a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(2) Approval may become final. If, within one year after commencement of its initial business operations, an institution that was conditionally approved for membership under paragraph (c)(1) of this section supplies evidence acceptable to the Bank that it satisfies the 10 percent requirement as provided under §1263.10, its membership approval shall become final.

(3) Approval may become void. If an institution that was conditionally approved for membership under paragraph (c)(1) does not satisfy the requirements of paragraph (c)(2) of this section, it shall be deemed to be out of compliance with the 10 percent requirement, and its conditional membership approval shall become void.

(d) Home financing policy requirement.—(1) Conditional approval. If a de novo insured depository institution applicant cannot meet the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and §1263.6(a)(6) as provided under §1263.13 because it has not received its first CRA performance evaluation, a Bank may conditionally approve that applicant for membership if it meets all other applicable requirements.

(2) Approval may become final. If an institution that was conditionally approved for membership under paragraph (d)(1) of this section supplies evidence acceptable to the Bank that it has satisfied the home financing policy requirement as provided under §1263.13 by receiving a CRA rating of “Satisfactory” or better on its first CRA performance evaluation, its membership approval shall cease to be conditional.

(3) Approval may become void. If an institution that was conditionally approved for membership under paragraph (d)(1) of this section receives a rating of “Needs to Improve” or “Substantial Non-Compliance” on its first CRA performance evaluation, and fails to rebut the presumption of non-compliance with the home financing policy requirement as provided under §1263.17(f), it shall be deemed to be out of compliance with the 10 percent requirement, and its conditional membership approval shall become void.
of compliance with that requirement and its conditional membership approval shall become void.

(e) Other rules. An institution that has been conditionally approved for membership under paragraph (c)(1) or (d)(1) of this section shall be subject to all regulations applicable to members generally, including those relating to stock purchase requirements and or collateral, notwithstanding that its membership may be conditional for some period of time. If an institution’s conditional membership approval becomes void as provided in paragraphs (c)(3) or (d)(3) of this section, then the Bank shall liquidate any outstanding indebtedness owed by the institution to the Bank and redeem or repurchase its capital stock in accordance with §1263.29.

§1263.15 Recently consolidated applicants.

An applicant that has recently consolidated with another institution is subject to the requirements of §§1263.7 to 1263.13 except as provided in this section.

(a) Financial condition requirement. For purposes of §1263.11(a)(1) and 1263.11(b)(3)(ii)(A), a recently consolidated applicant that has not yet filed regulatory financial reports as a consolidated entity for six quarters or three calendar year-ends shall provide to the Bank:

(1) All regulatory financial reports that the applicant has filed as a consolidated entity; and

(2) Pro forma combined financial statements for those quarters for which actual combined regulatory financial reports are unavailable.

(b) Home-financing policy requirement. For purposes of §1263.13, a recently consolidated applicant that has not yet received its first CRA performance evaluation as a consolidated entity shall have filed as part of its application a written justification acceptable to the Bank of how and why the applicant’s home financing credit policy and lending practices will meet the credit needs of its community.

(c) Makes long-term home mortgage loans requirement; 10 percent requirement. For purposes of determining compliance with §§1263.9 and 1263.10, a Bank may, in its discretion, permit a recently consolidated applicant that has not yet filed a regulatory financial report as a consolidated entity to provide the pro forma financial statement for the consolidated entity that the consolidating entities filed with the regulator that approved the consolidation.

§1263.16 Financial condition requirement for insurance company and certain CDFI applicants.

(a) Insurance companies.—(1) An insurance company applicant shall be deemed to meet the financial condition requirement of §1263.6(a)(4) if the Bank determines:

(i) Based on the information contained in the applicant’s most recent regulatory financial report filed with its appropriate regulator, that the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the NAIC; and

(ii) Based on the applicant’s most recent audited financial statements, that the applicant’s financial condition is such that the Bank can safely make advances to it.

(2) In making the determination required under paragraph (a)(1)(ii) of this section, the Bank shall use audited financial statements that have been prepared in accordance with generally accepted accounting principles, if they are available. If they are not available, the Bank may use audited financial statements prepared in accordance with statutory accounting principles.

(b) CDFIs other than CDFI credit unions.—(1) Review requirement. In order for a Bank to determine whether a CDFI applicant, other than a CDFI credit union, has complied with the financial condition requirement of §1263.6(a)(4), the applicant shall submit, as a part of its membership application, each of the following documents, and the Bank shall consider all such information prior to acting on the application for membership:

(i) Financial statements. An independent audit conducted within the prior year in accordance with generally accepted auditing standards by a certified public accounting firm, plus more recent quarterly statements, if available, and financial statements for
the two years prior to the most recent audited financial statement. At a minimum, all such financial statements must include income and expense statements, statements of activities, statements of financial position, and statements of cash flows. The financial statement for the most recent year must include separate schedules or disclosures of the financial position of each of the applicant’s affiliates, descriptions of their lines of business, detailed financial disclosures of the relationship between the applicant and its affiliates (such as indebtedness or subordinated debt obligations), disclosures of interlocking directorships with each affiliate, and identification of temporary and permanently restricted funds and the requirements of these restrictions;

(ii) CDFI Fund certification. The certification that the applicant has received from the CDFI Fund. If the certification is more than three years old, the applicant must also submit a written statement attesting that there have been no material events or occurrences since the date of certification that would adversely affect its strategic direction, mission, or business operations; and

(iii) Additional information. Any other relevant document or information a Bank requests concerning the applicant’s financial condition that is not contained in the applicant’s financial statements, as well as any other information that the applicant believes demonstrates that it satisfies the financial condition requirement of §1263.6(a)(4), notwithstanding its failure to meet any of the financial condition standards of paragraph (b)(2) of this section.

(2) Standards. A CDFI applicant, other than a CDFI credit union, shall be deemed to be in compliance with the financial condition requirement of §1263.6(a)(4) if it meets all of the following minimum financial standards—

(i) Net asset ratio. The applicant’s ratio of net assets to total assets is at least 20 percent, with net and total assets including restricted assets, where net assets is calculated as the residual value of assets over liabilities and is based on information derived from the applicant’s most recent financial statements;

(ii) Earnings. The applicant has shown positive net income, where net income is calculated as gross revenues less total expenses, is based on information derived from the applicant’s most recent financial statements, and is measured as a rolling three-year average;

(iii) Loan loss reserves. The applicant’s ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent, where loan loss reserves are a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible and are based on information derived from the applicant’s most recent financial statements;

(iv) Liquidity. The applicant has an operating liquidity ratio of at least 1.0 for the four most recent quarters, and for one or both of the two preceding years, where the numerator of the ratio includes unrestricted cash and cash equivalents and the denominator of the ratio is the average quarterly operating expense.

§ 1263.17 Rebuttable presumptions.

(a) Rebutting presumptive compliance. The presumption that an applicant meeting the requirements of §§1263.7 to 1263.16 is in compliance with the corresponding eligibility requirements of section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and §1263.6(a) and (b), may be rebutted, and the Bank may deny membership to an applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) Rebutting presumptive noncompliance. The presumption that an applicant not meeting a particular requirement of §§1263.8, 1263.11, 1263.12, 1263.13, or 1263.16, is not in compliance with the corresponding eligibility requirement of section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and §1263.6(a) may be rebutted and the applicant shall be deemed to be in compliance with an eligibility requirement, if it satisfies the applicable requirements in this section.

(c) Presumptive noncompliance by insurance company applicant with "subject
to inspection and regulation'' requirement of §1263.8. If an insurance company applicant is not subject to inspection and regulation by an appropriate State regulator accredited by the NAIC, as required by §1263.8, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the applicant is subject to inspection and regulation as required by §1263.8(a)(2), notwithstanding the regulator's lack of NAIC accreditation.

(d) Presumptive noncompliance with financial condition requirements of §§1263.11 and 1263.16—(1) Applicants subject to §1263.11. For applicants subject to §1263.11, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by §1263.11(b)(1), a variance from the rating required by §1263.11(b)(3)(i), or a variance from a performance trend criterion required by §1263.11(b)(3)(i), the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by §1263.6(a)(4), notwithstanding the lack of rating or variance.

(2) Applicants subject to §1263.16. For applicants subject to §1263.16, in the case of an insurance company applicant's variance from a capital requirement or standard of §1263.16(a) or, in the case of a CDFI applicant's variance from the standards of §1263.16(b), the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by §1263.6(a)(4), notwithstanding the variance.

(e) Presumptive noncompliance with character of management requirement of §1263.12—(1) Enforcement actions. If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator, the applicant shall provide or the Bank shall obtain:

(i) Regulator confirmation. Written or verbal confirmation from the applicant's appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) Written analysis. A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) Criminal, civil or administrative proceedings. If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report or, in the case of a CDFI applicant, during the past three years, the applicant shall provide or the Bank shall obtain—

(i) Regulator confirmation. Written or verbal confirmation from the applicant's appropriate regulator that the proceedings will not likely result in an enforcement action; or

(ii) Written analysis. A written analysis acceptable to the Bank indicating that the proceedings will not likely result in an enforcement action or, in the case of a CDFI applicant, that the proceedings will not likely have a significantly deleterious effect on the applicant's operations. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) Criminal, civil or administrative monetary liabilities, lawsuits or judgments. If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report or, in the case of a CDFI applicant, occurring within the past three years, that are
§ 1263.18 Determination of appropriate Bank district for membership.

(a) Eligibility. (1) An institution eligible to be a member of a Bank under the Bank Act and this part may be a member only of the Bank of the district in which the institution’s principal place of business is located, except as provided in paragraph (a)(2) of this section. A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another State and the Bank shall inform FHFA in writing of any such relocation.

(2) An institution eligible to become a member of a Bank under the Bank Act and this part may be a member of the Bank of a district adjoining the district in which the institution’s principal place of business is located, if demanded by convenience and then only with the approval of FHFA.

(b) Principal place of business. Except as otherwise designated in accordance with this section, the principal place of business of an institution is the State in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized and from which the institution conducts business operations.

(c) Designation of principal place of business—(1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a State other than the State in which it maintains its home office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a State other than the State in which it maintains its home office as the institution’s principal place of business, provided that, all of the following criteria are satisfied:

(i) At least 80 percent of the institution’s accounting books, records, and ledgers are maintained, located or held in such designated State;

(ii) A majority of meetings of the institution’s board of directors and constituent committees are conducted in such designated State; and

(iii) A majority of the institution’s five highest paid officers have their place of employment located in such designated State.

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significant to the applicant’s operations, the applicant shall provide or the Bank shall obtain—

(i) Regulator confirmation. Written or verbal confirmation from the applicant’s appropriate regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§1263.11(b)(2) and 1263.16(a); or

(ii) Written analysis. A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§1263.11(b)(2) or §1263.16(a), or the net asset ratio set forth in §1263.16(b)(2)(i). The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) Presumptive noncompliance with home financing policy requirements of §§1263.13 and 1263.14(d). If an applicant received a “Substantial Non-Compliance” rating on its most recent CRA performance evaluation, or a “Needs to Improve” CRA rating on its most recent CRA performance evaluation and a CRA rating of “Needs to Improve” or better on any immediately preceding formal CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) Regulator confirmation. Written or verbal confirmation from the applicant’s appropriate regulator of the applicant’s recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) Written analysis. A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant’s home financing credit policy and lending practices meet the credit needs of its community.
(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated State, FHFA, and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the State designated as the principal place of business and the Bank of which the subject institution is eligible to be a member.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that FHFA make the designation.

(d) Transfer of membership. (1) In the case of a member whose principal place of business has been designated as a State located in another Bank district in accordance with paragraph (c) of this section, or in the case of a member that has relocated its principal place of business to a State in another Bank district, the transfer of membership from one Bank to another Bank shall not take effect until the Banks involved reach an agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, FHFA shall determine the conditions under which the transfer shall take place.

(e) Effect of transfer. A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Bank Act (12 U.S.C. 1426) or §§1263.26 and 1263.27, nor the restriction on reacquiring Bank membership set forth in §1263.30.

(f) Insurance companies and CDFIs. (1) For an insurance company or CDFI that cannot satisfy the requirements of paragraphs (b) or (c) of this section for designating its principal place of business, a Bank shall designate as the principal place of business the geographic location from which the institution actually conducts the predominant portion of its business activities.

(2) A Bank may deem an institution to conduct the predominant portion of its business activities in a particular State if any two of the following three factors are present:

(i) The institution’s largest office, as measured by the number of employees, is located in that State;

(ii) A plurality of the institution’s employees are located in that State; or

(iii) The places of employment for a plurality of the institution’s senior executives are located in that State.

(3) If a Bank cannot designate a State as the principal place of business under paragraph (f)(1) of this section, and cannot otherwise identify a geographic location from which the institution actually conducts the predominant portion of its business activities, it shall designate the State of domicile or incorporation as the principal place of business for that institution.

(4) For purposes of paragraph (f)(2) of this section, the term “senior executive” means all officers at or above the level of “senior vice president” and includes the positions of president, executive vice president, chief executive officer, chief financial officer, chief operating officer, general counsel, as well as any individuals who perform functions similar to those positions whether or not the individual has an official title.

(g) Records. A Bank designating the principal place of business for a member under this section shall document the bases for its determination in writing and shall include that documentation in the membership digest and application file for the institution that are required under §1263.2.

Subpart D—Stock Requirements

§ 1263.19 [Reserved]

§ 1263.20 Stock purchase.

(a) Minimum purchase requirement. An institution that has been approved for membership in a Bank as provided in this part shall become a member of that Bank upon purchasing the amount of stock required under the membership stock purchase provisions of that...
Bank’s capital structure plan. If an institution fails to purchase the minimum amount of stock required for membership within 60 calendar days after the date on which it is approved for membership, the membership approval shall become void and that institution may not become a member of that Bank until after it has filed a new application and the Bank has approved that application pursuant to the requirements of this part.

(b) Issuance of stock. After approving an institution for membership, and in return for payment in full of the par value, a Bank shall issue to that institution the amount of capital stock required to be purchased under the Bank’s capital structure plan.

(c) Reports. Each Bank shall report to FHFA information regarding the minimum investment in Bank capital stock made by each new member referred to in paragraph (a) of this section, in accordance with the instructions provided in the Data Reporting Manual.

§ 1263.21 [Reserved]

§ 1263.22 Annual calculation of stock holdings.

A Bank shall calculate annually each member’s required minimum holdings of Bank stock using calendar year-end financial data provided by the member to the Bank, pursuant to §1263.31(d), and shall notify each member of the result. The notice shall clearly state that the Bank’s calculation of each member’s minimum stock holdings is to be used to determine the number of votes that the member may cast in that year’s election of directors and shall identify the State within the district in which the member will vote. A member that does not agree with the Bank’s calculation of the minimum stock purchase requirement or with the identification of its voting State may request FHFA to review the Bank’s determination. FHFA shall promptly determine the member’s minimum required holdings and its proper voting State, which determination shall be final.

§ 1263.23 Excess stock.

(a) Sale of excess stock. Subject to the restriction in paragraph (b) of this section, a member may purchase excess stock as long as the purchase is approved by the member’s Bank and is permitted by the laws under which the member operates.

(b) Restriction. Any Bank with excess stock greater than one percent of its total assets shall not declare or pay any dividends in the form of additional shares of Bank stock or otherwise issue any excess stock. A Bank shall not issue excess stock, as a dividend or otherwise, if after the issuance, the outstanding excess stock at the Bank would be greater than one percent of its total assets.

Subpart E—Withdrawal, Termination and Readmission

§ 1263.24 Consolidations involving members.

(a) Consolidation of members. Upon the consolidation of two or more institutions that are members of the same Bank into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate on the cancellation of its charter. Upon the consolidation of two or more institutions, at least two of which are members of different Banks, into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate upon cancellation of its charter, provided, however, that if more than 80 percent of the assets of the consolidated institution are derived from the assets of a disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which that disappearing institution was a member prior to the consolidation, and the membership of the other institutions shall terminate upon the effective date of the consolidation.

(b) Consolidation into nonmember—(1) In general. Upon the consolidation of a
member into an institution that is not a member of a Bank, where the consolidated institution operates under the charter of the nonmember institution, the membership of the disappearing institution shall terminate upon the cancellation of its charter.

(2) Notification. If a member has consolidated into a nonmember that has its principal place of business in a State in the same Bank district as the former member, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the former member within which to notify the Bank of the former member that the consolidated institution intends to apply for membership in such Bank. If the consolidated institution does not so notify the Bank by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with §1263.29.

(3) Application. If such a consolidated institution has notified the appropriate Bank of its intent to apply for membership, the consolidated institution shall submit an application for membership within 60 calendar days of so notifying the Bank. If the consolidated institution does not submit an application for membership by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with §1263.29.

(4) Outstanding indebtedness. If a member has consolidated into a nonmember institution, the Bank need not require the former member or its successor to liquidate any outstanding indebtedness owed by the former member, as otherwise may be required under §1263.29, during:

(i) The initial 60 calendar-day notification period;

(ii) The 60 calendar-day period following receipt of a notification that the consolidated institution intends to apply for membership; and

(iii) The period of time during which the Bank processes the application for membership.

(5) Approval of membership. If the application of such a consolidated institution is approved, the consolidated institution shall become a member of that Bank upon the purchase of the amount of Bank stock necessary, when combined with any Bank stock acquired from the disappearing member, to satisfy the minimum stock purchase requirements established by the Bank’s capital structure plan.

(6) Disapproval of membership. If the Bank disapproves the application for membership of the consolidated institution, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with §1263.29.

(c) Dividends on acquired Bank stock. A consolidated institution shall be entitled to receive dividends on the Bank stock that it acquires as a result of a consolidation with a member in accordance with applicable FHFA regulations.

§ 1263.25 [Reserved]

§ 1263.26 Voluntary withdrawal from membership.

(a) In general—(1) Any institution may withdraw from membership by providing to the Bank written notice of its intent to withdraw from membership. A member that has so notified its Bank shall be entitled to have continued access to the benefits of membership until the effective date of its withdrawal. The Bank need not commit to providing any further services, including advances, to a withdrawing member that would mature or otherwise terminate subsequent to the effective date of the withdrawal. A member may cancel its notice of withdrawal at any time prior to its effective date by providing a written cancellation notice to the Bank. A Bank may impose a fee on a member that cancels a notice of withdrawal, provided that the fee or the manner of its calculation is specified in the Bank’s capital plan.
(2) A Bank shall notify FHFA within 10 calendar days of receipt of any notice of withdrawal or notice of cancellation of withdrawal from membership.

(b) Effective date of withdrawal. The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold, as of the date that the notice of withdrawal is submitted, under the terms of a Bank’s capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to the effective date of the termination of its membership.

(c) Stock redemption periods. The receipt by a Bank of a notice of withdrawal shall commence the applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock held by that member that is not already subject to a pending request for redemption. In the case of an institution, the membership of which has been terminated as a result of a merger or other consolidation into a nonmember or into a member of another Bank, the applicable stock redemption periods for any stock that is not subject to a pending notice of redemption shall be deemed to commence on the date on which the charter of the former member is cancelled.

§ 1263.27 Involuntary termination of membership.

(a) Grounds. The board of directors of a Bank may terminate the membership of any institution that:

(1) Fails to comply with any requirement of the Bank Act, any regulation adopted by FHFA, or any requirement of the Bank’s capital plan;

(2) Becomes insolvent or otherwise subject to the appointment of a conservator, receiver, or other legal custodian under federal or State law; or

(3) Would jeopardize the safety or soundness of the Bank if it were to remain a member.

(b) Stock redemption periods. The applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock owned by a member and not already subject to a pending request for redemption, shall commence on the date that the Bank terminates the institution’s membership.

(c) Membership rights. An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

§ 1263.28 [Reserved]

§ 1263.29 Disposition of claims.

(a) In general. If an institution withdraws from membership or its membership is otherwise terminated, the Bank shall determine an orderly manner for liquidating all outstanding indebtedness owed by that member to the Bank and for settling all other claims against the member. After all such obligations and claims have been extinguished or settled, the Bank shall return to the member all collateral pledged by the member to the Bank to secure its obligations to the Bank.

(b) Bank stock. If an institution that has withdrawn from membership or that otherwise has had its membership terminated remains indebted to the Bank or has outstanding any business transactions with the Bank after the effective date of its termination of membership, the Bank shall not redeem or repurchase any Bank stock that is required to support the indebtedness or the business transactions until after all such indebtedness and business transactions have been extinguished or settled.

§ 1263.30 Readmission to membership.

(a) In general. An institution that has withdrawn from membership or otherwise has had its membership terminated and which has divested all of its shares of Bank stock, may not be readmitted to membership in any Bank, or acquire any capital stock of any Bank, for a period of five years from
§ 1263.31 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or FHFA may require for purposes of the Bank Act;

(b) Agrees that reports of examination by local, State or federal agencies or institutions may be furnished by such authorities to the Bank or FHFA upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of making the calculation described in §1263.22; and

(e) Agrees to provide the Bank with copies of reports of condition and operations required to be filed with the member’s appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operations required to be filed.

§ 1263.32 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words “Member Federal Home Loan Bank System.”

PART 1264—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES

12 CFR Ch. XII (1–1–17 Edition)

1264.2 Bank authority to make advances to housing associates.
1264.3 Housing associate eligibility requirements.
1264.4 Satisfaction of eligibility requirements.
1264.5 Housing associate application process.
1264.6 Appeals.


EDITORIAL NOTE: Nomenclature changes to part 1264 appear at 78 FR 2324, Jan. 11, 2013.

§ 1264.1 Definitions.

As used in this part:
Governmental agency means the governor, legislature, and any other component of a federal, state, local, tribal, or Alaskan Native village government with authority to act for or on behalf of that government.
State housing finance agency or SHFA means:
(1) A public agency, authority, or publicly sponsored corporation that serves as an instrumentality of any state or political subdivision of any state, and functions as a source of residential mortgage loan financing in that state; or
(2) A legally established agency, authority, corporation, or organization that serves as an instrumentality of any Indian tribe, band, group, nation, community, or Alaskan Native village recognized by the United States or any state, and functions as a source of residential mortgage loan financing for the Indian or Alaskan Native community.


§ 1264.2 Bank authority to make advances to housing associates.

Subject to the provisions of the Bank Act and part 1266 of this chapter, a Bank may make advances to an entity that is not a member of the Bank if the Bank has certified the entity as a housing associate under the provisions of this part.

§ 1264.3 Housing associate eligibility requirements.

(a) General. A Bank may certify as a housing associate any applicant that meets the following requirements, as determined using the criteria set forth in §1264.4:

(1) The applicant is approved under title II of the National Housing Act (12 U.S.C. 1707, et seq.);

(2) The applicant is a chartered institution having succession;

(3) The applicant is subject to the inspection and supervision of some governmental agency;

(4) The principal activity of the applicant in the mortgage field consists of lending its own funds; and

(5) The financial condition of the applicant is such that advances may be safely made to it.

(b) State housing finance agencies. In addition to meeting the requirements in paragraph (a) of this section, any applicant seeking access to advances as a SHFA pursuant to §1266.17(b)(2) of this chapter shall provide evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations describing the applicant's structure and responsibilities, that the applicant is a state housing finance agency as defined in §1264.1.

§ 1264.4 Satisfaction of eligibility requirements.

(a) HUD approval requirement. An applicant shall be deemed to meet the requirement in section 10b(a) of the Bank Act (12 U.S.C. 1430b(a)) and §1264.3(a)(1) that it be approved under title II of the National Housing Act if it submits a current HUD Yearly Verification Report or other documentation issued by HUD stating that the Federal Housing Administration of HUD has approved the applicant as a mortgagee.

(b) Charter requirement. An applicant shall be deemed to meet the requirement in section 10b(a) of the Bank Act and §1264.3(a)(2) that it be a chartered institution having succession if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations under which the applicant was created, that:

(1) The applicant is a government agency; or

(2) The applicant is chartered under state, federal, local, tribal, or Alaskan Native village law as a corporation or other entity that has rights, characteristics, and powers under applicable law similar to those granted a corporation.

(c) Inspection and supervision requirement. (1) An applicant shall be deemed to meet the inspection and supervision requirement in section 10b(a) of the Bank Act (12 U.S.C. 1430b(a)) and §1264.3(a)(3) if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, relevant statutes and/or regulations, that pursuant to statute or regulation, the applicant is subject to the inspection and supervision of a federal, state, local, tribal, or Alaskan native village governmental agency.

(2) An applicant shall be deemed to meet the inspection requirement if there is a statutory or regulatory requirement that the applicant be audited or examined periodically by a governmental agency or by an external auditor.

(3) An applicant shall be deemed to meet the supervision requirement if the governmental agency has statutory or regulatory authority to remove an applicant's officers or directors for cause or otherwise exercise enforcement or administrative control over actions of the applicant.

(d) Mortgage activity requirement. An applicant shall be deemed to meet the mortgage activity requirement in section 10b(a) of the Bank Act (12 U.S.C. 1430b(a)) and §1264.3(a)(4) if it provides documentary evidence satisfactory to the Bank, such as a financial statement or other financial documents that include the applicant's mortgage loan assets and their funding liabilities, that it lends its own funds as its principal activity in the mortgage field. For purposes of this paragraph, lending funds includes, but is not limited to, the purchase of whole mortgage loans. In the case of a federal, state, local, tribal, or Alaskan Native village government agency, appropriated funds shall be considered an applicant's own funds. An applicant shall
be deemed to satisfy this requirement notwithstanding that the majority of its operations are unrelated to mortgage lending if its mortgage activity conforms to this requirement. An applicant that acts principally as a broker for others making mortgage loans, or whose principal activity is to make mortgage loans for the account of others, does not meet this requirement.

(e) Financial condition requirement. An applicant shall be deemed to meet the financial condition requirement in §1264.3(a)(5) if the Bank determines that advances may be safely made to the applicant. The applicant shall submit to the Bank copies of its most recent regulatory audit or examination report, or external audit report, and any other documentary evidence, such as financial or other information, that the Bank may require to make the determination.

§1264.5 Housing associate application process.

(a) Authority. The Banks are authorized to approve or deny all applications for certification as a housing associate, subject to the requirements of the Bank Act and this part. A Bank may delegate the authority to approve applications for certification as a housing associate only to a committee of the Bank’s board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) Application requirements. An applicant for certification as a housing associate shall submit an application that satisfies the requirements of the Bank Act and this part to the Bank of the district in which the applicant’s principal place of business, as determined in accordance with part 925 of this title, is located.

(c) Bank decision process—(1) Action on applications. A Bank shall approve or deny an application for certification as a housing associate within 60 calendar days of the date the Bank deems the application to be complete. A Bank shall deem an application complete, and so notify the applicant in writing, when it has obtained all of the information required by this part and any other information it deems necessary to process the application. If a Bank determines during the review process that additional information is necessary to process the application, the Bank may deem the application incomplete and stop the 60-day time period by providing written notice to the applicant. When the Bank receives the additional information, it shall again deem the application complete, so notify the applicant in writing, and resume the 60-day time period where it stopped.

(2) Decision on applications. The Bank or a duly delegated committee of the Bank’s board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development shall approve, or the board of directors of a Bank shall deny, each application for certification as a housing associate by a written decision resolution stating the grounds for the decision. Within three business days of a Bank’s decision on an application, the Bank shall provide the applicant and the FHFA with a copy of the Bank’s decision resolution.

(3) File. The Bank shall maintain a certification file for each applicant for at least three years after the date the Bank decides whether to approve or deny certification or the date the FHFA resolves any appeal, whichever is later. At a minimum, the certification file shall include all documents submitted by the applicant or otherwise obtained or generated by the Bank concerning the applicant, all documents the Bank relied upon in making its determination regarding certification, including copies of statutes and regulations, and the decision resolution.

§1264.6 Appeals.

(a) General. Within 90 calendar days of the date of a Bank’s decision to deny an application for certification as a housing associate, the applicant may
submit a written appeal to FHFA that includes the Bank’s decision resolution and a statement of the basis for the appeal with sufficient facts, information, analysis and explanation to support the applicant’s position. Send appeals to the Deputy Director for Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 400 7th Street SW., Seventh Floor, Washington, DC 20219, with a copy to the Bank.

(b) Record for appeal. Upon receiving a copy of an appeal, the Bank whose action has been appealed shall provide to the FHFA a complete copy of the applicant’s certification file maintained by the Bank under §1264.5(c)(3). Until the FHFA resolves the appeal, the Bank shall promptly provide to the FHFA any relevant new materials it receives. The FHFA may request additional information or further supporting arguments from the applicant, the Bank, or any other party that the FHFA deems appropriate.

(c) Deciding appeals. Within 90 calendar days of the date an applicant files an appeal with the FHFA, the FHFA shall consider the record for appeal described in paragraph (b) of this section and resolve the appeal based on the requirements of the Bank Act and this part.


PART 1265—CORE MISSION ACTIVITIES

Sec.
1265.1 Definitions.
1265.2 Mission of the Banks.
1265.3 Core mission activities.


SOURCE: 65 FR 25278, May 1, 2000, unless otherwise noted. Redesignated at 75 FR 8240, Feb. 24, 2010.

§ 1265.1 Definitions.

As used in this part:

Advance means a loan from a Bank that is:

1. Provided pursuant to a written agreement;
2. Supported by a note or other written evidence of the borrower’s obligations; and
3. Fully secured by collateral in accordance with the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) and applicable regulations.

SBIC means a small business investment company formed pursuant to section 301 of the Small Business Investment Act (15 U.S.C. 661).

Targeted income level means:

1. For rural areas, incomes at or below 115 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four; and
2. For urban areas, incomes at or below 100 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four.


§ 1265.2 Mission of the Banks.

The mission of the Banks is to provide to their members’ and housing associates financial products and services, including but not limited to advances, that assist and enhance such members’ and housing associates financing:

(a) Financing of housing, including single-family and multi-family housing serving consumers at all income levels; and

(b) Community lending.

[65 FR 25278, May 1, 2000, as amended at 67 FR 12850, Mar. 20, 2002; 67 FR 39791, June 10, 2002]

§ 1265.3 Core mission activities.

The following Bank activities qualify as core mission activities:

(a) Advances;
(b) Acquired member assets (AMA), except that United States government-insured or guaranteed whole single-family residential mortgage loans acquired under a commitment entered into after April 12, 2000 shall qualify only in a cumulative dollar amount up to 33 percent of the cumulative total dollar amount of AMA acquired by a Bank after April 12, 2000, less the cumulative dollar amount of United
States government-insured or guaranteed whole single-family residential mortgage loans acquired after April 12, 2000 under commitments entered into on or before April 12, 2000 (which calculation, at the discretion of two or more Banks, may be made based on aggregate transactions among those Banks);

(c) Standby letters of credit;

(d) Intermediary derivative contracts;

(e) Debt or equity investments:

(1) That primarily benefit households having a targeted income level, a significant proportion of which must benefit households with incomes at or below 80 percent of area median income, or areas targeted for redevelopment by local, state, tribal or Federal government (including Federal Empowerment Zones and Enterprise and Champion Communities), by providing or supporting one or more of the following activities:

(i) Housing;

(ii) Economic development;

(iii) Community services;

(iv) Permanent jobs; or

(v) Area revitalization or stabilization;

(2) In the case of mortgage- or asset-backed securities, the acquisition of which would expand liquidity for loans that are not otherwise adequately provided by the private sector and do not have a readily available or well established secondary market; and

(3) That involve one or more members or housing associates in a manner, financial or otherwise, and to a degree to be determined by the Bank;

(f) Investments in SBICs, where one or more members or housing associates of the Bank also make a material investment in the same activity;

(g) SBIC debentures, the short term tranche of SBIC securities, or other debentures that are guaranteed by the Small Business Administration under title III of the Small Business Investment Act of 1958, as amended (15 U.S.C. 631 et seq.);

(h) Section 108 Interim Notes and Participation Certificates guaranteed by the Department of Housing and Urban Development under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308); and

(i) Investments and obligations issued or guaranteed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.).

[65 FR 43981, July 17, 2000]

PART 1266—ADVANCES

Subpart A—Advances to Members

Sec. 1266.1 Definitions.

1266.1 Authorization and application for advances; obligation to repay advances.

1266.3 Purpose of long-term advances; Proxy text.

1266.4 Limitations on access to advances.

1266.5 Terms and conditions for advances.

1266.6 Fees.

1266.7 Collateral.

1266.8 Banks as secured creditors.

1266.9 Pledged collateral; verification.

1266.10 Collateral valuation; appraisals.

1266.11 [Reserved]

1266.12 Intradistrict transfer of advances.

1266.13 Special advances to savings associations.

1266.14 Advances to the Savings Association Insurance Fund.

1266.15 Liquidation of advances upon termination of membership.

Subpart B—Advances to Housing Associates

1266.16 Scope.

1266.17 Advances to housing associates.

AUTHORITY: 12 U.S.C. 1426, 1429, 1430, 1430b, 1431, 4511(b), 4513, 4526(a).


Subpart A—Advances to Members

§ 1266.1 Definitions.

As used in this part:

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower’s obligation; and
(3) Fully secured by collateral in accord-ance with the Bank Act and this part.

Affiliate means any business entity that controls, is controlled by, or is under common control with, a member. Capital deficient member means a member that fails to meet its minimum regulatory capital requirements as defined or otherwise required by the member’s appropriate federal banking agency, insurer or, in the case of members that are not federally insured depository institutions, state regulator. Cash equivalents means investments that—

(1) Are readily convertible into known amounts of cash;
(2) Have a remaining maturity of 90 days or less at the acquisition date; and
(3) Are held for liquidity purposes.

CFI member means a member that is a Community Financial Institution, as defined in §1263.1 of this chapter, except that, for purposes of this part, the member’s average of total assets over three years shall be calculated by the Bank:

(1) Based on the average of total assets drawn from the institution’s regulatory financial reports (as defined in §1263.1 of this chapter) filed with its appropriate regulator (as defined in §1263.1 of this chapter) for the three most recent calendar year-ends; and
(2) Annually, and shall be effective April 1 of each year.

Community development has the same meaning as under the definition set forth in the Community Reinvestment rule for the Federal Reserve System (12 CFR part 228), Federal Deposit Insurance Corporation (12 CFR part 345), the Office of Thrift Supervision (12 CFR part 563e) or the Office of the Comptroller of the Currency (12 CFR part 25), whichever is the CFI member’s primary Federal regulator.

Community development loan means a loan, or a participation interest in such loan, that has as its primary purpose community development, but such loans shall not include:

(1) Any loan or instrument that qualifies as eligible security for an advance under §1266.7(a) of this part;
(2) Any loan that qualifies as a small agri-business loan, small business loan or small farm loan, under definitions set forth in this section; or
(3) Consumer loans or credit extended to one or more individuals for household, family or other personal expenditures.

Credit union means a credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

Depository institution means a bank, savings association, or credit union.

Dwelling unit means a single room or a unified combination of rooms designed for residential use by one household.

Improved residential real property means residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units.

Insurer means the FDIC for insured depository institutions, as defined section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)), and the NCUA for federally-insured credit unions.

Long-term advance means an advance with an original term to maturity greater than five years.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Mortgage-backed security means:

(1) An equity security representing an ownership interest in:
   (i) Fully disbursed, whole first mortgage loans on improved residential real property; or
   (ii) Mortgage pass-through or participation securities which are themselves backed entirely by fully disbursed, whole first mortgage loans on improved residential real property; or
(2) An obligation, bond, or other debt security backed entirely by the assets described in paragraph (1)(i) or (ii) of this definition.

Multifamily property means:

(1)(i) Real property that is solely residential and which includes five or more dwelling units combined, provided the property is primarily residential;
(2) Multifamily property as defined in this section includes nursing homes, dormitories and homes for the elderly. 

Nonresidential real property means real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institutions, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the FHFA in its discretion.

One-to-four family property means any of the following:
(1) Real property containing:
(i) One-to-four dwelling units; or
(ii) More than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;
(2) Manufactured housing if:
(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and
(ii) The loan to purchase the manufactured housing is secured by that manufactured housing;
(3) Individual condominium dwelling units or interests in individual cooperative housing units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or
(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

Residential real property means:
(1) Any of the following:
(i) One-to-four family property;
(ii) Multifamily property;
(iii) Real property to be improved by the construction of dwelling units;
(iv) Real property in the process of being improved by the construction of dwelling units;
(2) The term residential real property does not include nonresidential real property as defined in this section.

Savings association means a savings association as defined in section 3(b) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(b)).

Small agri-business loans means loans to finance agricultural production and other loans to farmers that are within the legal lending limit of the reporting CFI member, and that are reported on either: Schedule RC-C, Part I, item 3 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

Small business loans means commercial and industrial loans that are within the legal lending limit of the reporting CFI member and that are reported on either: Schedule RC-C, Part I, item 1.e or Schedule RC-C, Part I, item 4 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

Small farm loans means loans secured primarily by farmland that are within the legal lending limit of the reporting CFI member, and that are reported on either: Schedule RC-C, Part I, item 1.a. or 1.b of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC260 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).
Financial Report filed by savings associations (or equivalent successor schedules).

State housing finance agency or SHFA has the meaning set forth in §1264.1 of this chapter.

State regulator means a state insurance commissioner or state regulatory entity with primary responsibility for supervising a member borrower that is not a federally insured depository institution.

Tangible capital means:

1. Capital, calculated according to GAAP, less “intangible assets” except for purchased mortgage servicing rights to the extent such assets are included in a member’s core or Tier 1 capital, as reported in a member’s Report of Condition and Income for members whose primary federal regulator is the FDIC, the OCC, or the FRB.

2. Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members that are not regulated by the FDIC, the OCC, or the FRB; provided that a Bank shall include a member’s purchased mortgage servicing rights to the extent such assets are included for the purpose of meeting regulatory capital requirements. In addition, for those members that are insurance companies and that do not file or otherwise prepare financial statements based on GAAP, Banks may base this calculation on the member’s financial statements prepared using Statutory Accounting Principles as implemented by the insurance company member’s appropriate state regulator.

Targeted beneficiaries has the meaning set forth in §952.1 of this title.


§ 1266.2 Authorization and application for advances; obligation to repay advances.

(a) Application for advances. A Bank may accept oral or written applications for advances from its members.

(b) Obligation to repay advances. (1) A Bank shall require any member to which an advance is made to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank, together with interest and any unpaid costs and expenses in connection therewith, according to the terms under which such advance was made or other indebtedness incurred.

(2) Such obligations shall be evidenced by a written advances agreement that shall be reviewed by the Bank’s legal counsel to ensure such agreement is in compliance with applicable law.

(c) Secured advances. (1) Each Bank shall make only fully secured advances to its members as set forth in the Bank Act, the provisions of this part and policy guidelines established by the FHFA.

(2) The Bank shall execute a written security agreement with each borrowing member which establishes the Bank’s security interest in collateral securing advances.

(3) Such written security agreement shall, at a minimum, describe the type of collateral securing the advances and give the Bank a perfectible security interest in the collateral.

(d) Form of applications and agreements. Applications for advances, advances agreements and security agreements shall be in substantially such form as approved by the Bank’s board of directors, or a committee thereof specifically authorized by the board of directors to approve such forms.

(e) Status of secured lending. All secured transactions, regardless of the form of the transaction, for money borrowed from a Bank by a member of any Bank shall be considered an advance subject to the requirements of this part.


§ 1266.3 Purpose of long-term advances; Proxy test.

(a) A Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or
§ 1266.4 Limitations on access to advances.

(a) Credit underwriting. A Bank, in its discretion, may:

(1) Limit or deny a member’s application for an advance if, in the Bank’s judgment, such member:

(i) Is engaging or has engaged in any unsafe or unsound banking practices;

(ii) Has inadequate capital;

(iii) Is sustaining operating losses;

(iv) Has financial or managerial deficiencies, as determined by the Bank, that bear upon the member’s creditworthiness; or

(v) Has any other deficiencies, as determined by the Bank;

(2) Make advances and renewals only if the Bank determines that it may safely make such advance or renewal to the member, including advances and renewals made pursuant to this section

(b) New advances to members without positive tangible capital. (1) A Bank shall not make a new advance to a member without positive tangible capital unless the member’s appropriate federal banking agency or insurer requests in writing that the Bank make such advance. The Bank shall promptly provide the FHFA with a copy of any such request.

(2) A Bank shall use the most recently available Thrift Financial Report, Report of Condition, and Income or other regulatory report of financial condition to determine whether a member has positive tangible capital.

(c) Renewals of advances to members without positive tangible capital—(1) Renewal for 30-day terms. A Bank may renew outstanding advances, for successive terms of up to 30 days each, to a member without positive tangible capital; provided, however, that a Bank shall honor any written request of the appropriate federal banking agency or insurer that the Bank not renew such advances.

(2) Renewal for longer than 30-day terms. A Bank may renew outstanding advances to a member without positive tangible capital for a term greater than 30 days at the written request of the appropriate federal banking agency or insurer.

(d) Advances to capital deficient but solvent members. (1) Except as provided in paragraph (d)(2)(i) of this section, a Bank may make a new advance or renew an outstanding advance to a capital deficient member that has positive tangible capital.

(2)(i) A Bank shall not lend to a capital deficient member that has positive tangible capital if it receives written notice from the appropriate federal banking agency or insurer that the member’s use of Bank advances has been prohibited. The Bank shall promptly provide the FHFA with a copy of any such notice.

(ii) A Bank may resume lending to such a capital deficient member if the Bank receives a written statement from the appropriate federal banking agency or insurer which re-establishes the member’s ability to use advances.

(e) Reporting. (1) Each Bank shall provide the FHFA with a report of the advances and commitments outstanding to each of its members in accordance with the instructions provided in the Data Reporting Manual issued by the FHFA, as amended from time to time.

(2) Each Bank shall, upon written request from a member’s appropriate federal banking agency or insurer, provide to such entity information on advances and commitments outstanding to the member.

(f) Members without federal regulators. In the case of members that are not federally insured depository institutions, the references in paragraphs (b),
(c), (d) and (e) of this section to “appropriate federal banking agency or insurer” shall mean the member’s state regulator acting in a capacity similar to an appropriate federal banking agency or insurer.

(g) Advance commitments. (1) In the event that a member’s access to advances from a Bank is restricted pursuant to this section, the Bank shall not fund outstanding commitments for advances not exercised prior to the imposition of the restriction. This requirement shall apply to all advance commitments made by a Bank after August 25, 1993.

(2) Each Bank shall include the stipulation contained in paragraph (g)(1) of this section as a clause in either:
   (i) The written advances agreement required by § 1266.2(b)(2) of this part; or
   (ii) The written advances application required by § 1266.2(a) of this part.

§ 1266.6 Fees.

(a) Fees in member products policy. All fees charged by each Bank and any...
§ 1266.7 Collateral.

(a) Eligible security for advances to all members. At the time of origination or renewal of an advance, each Bank shall obtain from the borrowing member or, in accordance with paragraph (g) of this section, an affiliate of the borrowing member, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) Mortgage loans and privately issued securities. 
   (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or
   (ii) Privately issued mortgage-backed securities, excluding the following:
       (A) Securities that represent a share of only the interest payments or only the principal payments from the underlying mortgage loans;
       (B) Securities that represent a subordinate interest in the cash flows from the underlying mortgage loans;
       (C) Securities that represent an interest in any residual payments from the underlying pool of mortgage loans; or
       (D) Such other high-risk securities as the FHFA in its discretion may determine.
   (2) Agency securities. Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation:
       (i) Mortgage-backed securities issued or guaranteed by Freddie Mac, Fannie Mae, Ginnie Mae, or any other agency of the United States Government;
       (ii) Mortgages or other loans, regardless of delinquency status, to the extent that the mortgage or loan is insured or guaranteed by the United States or any agency thereof, or otherwise is backed by the full faith and credit of the United States, and such insurance, guarantee or other backing is for the direct benefit of the holder of the mortgage or loan; and
       (iii) Securities backed by, or representing an equity interest in, mortgages or other loans referred to in paragraph (a)(2)(ii) of this section.
   (3) Cash or deposits. Cash or deposits in a Bank.
   (4) Other real estate-related collateral. 
      (i) Other real estate-related collateral provided that:
          (A) Such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course; and
          (B) The Bank can perfect a security interest in such collateral.
(ii) Eligible other real estate-related collateral may include, but is not limited to:
   (A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;
   (B) Second mortgage loans, including home equity loans;
   (C) Commercial real estate loans; and
   (D) Mortgage loan participations.

(5) Securities representing equity interests in eligible advances collateral. Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as:
   (i) Eligible collateral under paragraphs (a)(1), (2), (3) or (4) of this section; or
   (ii) Cash equivalents.

(b) Additional collateral eligible as security for advances to CFI members or their affiliates—(1) General. Subject to the requirements set forth in part 1272 of this chapter, a Bank is authorized to accept from CFI members or their affiliates as security for advances small business loans, small farm loans, small agribusiness loans, or community development loans, in each case fully secured by collateral other than real estate, or securities representing a whole interest in such secured loans, provided that:
   (i) Such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course; and
   (ii) The Bank can perfect a security interest in such collateral.

(2) Change in CFI status. If a Bank determines, as of April 1 of each year, that a member that has previously qualified as a CFI no longer qualifies as a CFI, and the member has total advances outstanding that exceed the amount that can be fully secured by collateral under paragraph (a) of this section, the Bank may:
   (i) Permit the advances of such member to run to their stated maturities; and
   (ii) Renew such member’s advances to mature no later than March 31 of the following year; provided that the total of the member’s advances under paragraphs (b)(2)(i) and (ii) of this section shall be fully secured by collateral set forth in paragraphs (a) and (b) of this section.

(c) Bank restrictions on eligible advances collateral. A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(d) Additional advances collateral. The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraphs (a) or (b) of this section or section 10 of the Bank Act (12 U.S.C. 1430).

(e) Bank stock as collateral. (1) Pursuant to section 10(c) of the Bank Act (12 U.S.C. 1430(c)), a Bank shall have a lien upon, and shall hold, the stock of a member in the Bank as further collateral security for all indebtedness of the member to the Bank.

(2) The written security agreement used by the Bank shall provide that the borrowing member’s Bank stock is assigned as additional security by the member to the Bank.

(3) The security interest of the Bank in such member’s Bank stock shall be entitled to the priority provided for in section 10(e) of the Bank Act (12 U.S.C. 1430(e)).

(f) Advances collateral security requiring formal approval. No home mortgage loan otherwise eligible to be accepted as collateral for an advance by a Bank under this section shall be accepted as collateral for an advance if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the FHFA has endorsed such resolution.

(g) Pledge of advances collateral by affiliates. Assets held by an affiliate of a member that are eligible as collateral
under paragraphs (a) or (b) of this section may be used to secure advances to that member only if:

(1) The collateral is pledged to secure either:

(i) The member’s obligation to repay advances; or

(ii) A surety or other agreement under which the affiliate has assumed, along with the member, a primary obligation to repay advances made to the member; and

(2) The Bank obtains and maintains a legally enforceable security interest pursuant to which the Bank’s legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly, and such functional equivalence is supported by adequate documentation.


§ 1266.9 Pledged collateral; verification.

(a) Collateral safekeeping. (1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to §1266.2(c) of this part whereby such collateral is retained solely for the Bank’s benefit and subject to the Bank’s control and direction.

(2) A Bank shall take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secure as its security interest in collateral pledged by depository institutions.

(3) A Bank may at any time perfect its security interest in collateral securing an advance to a member.

(b) Collateral verification. Each Bank shall establish written procedures and standards for verifying the existence of collateral securing the Bank’s advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures and standards.


§ 1266.10 Collateral valuation; appraisals.

(a) Collateral valuation. Each Bank shall determine the value of collateral securing the Bank’s advances in accordance with the collateral valuation procedures set forth in the Bank’s member products policy established pursuant to §1239.30 of this chapter.

(b) Fair application of procedures. Each Bank shall apply the collateral valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) Appraisals. A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such
other investigations of collateral as the Bank deems necessary and proper.

§ 1266.11 [Reserved]

§ 1266.12 Intradistrict transfer of advances.

(a) Advances held by members. A Bank may allow one of its members to assume an advance extended by the Bank to another of its members, provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

(b) Advances held by nonmembers. A Bank may allow one of its members to assume an advance held by a nonmember, provided the advance was originated by the Bank and provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

§ 1266.13 Special advances to savings associations.

(a) Eligible institutions. (1) A Bank, upon receipt of a written request from the OCC, with respect to a federal savings association, or from the FDIC, with respect to a state chartered savings association, may make short-term advances to a savings association member pursuant to section 10(h) of the Bank Act (12 U.S.C. 1430(h)).

(2) Such request must certify that the savings association member:

(i) Is solvent but presents a supervisory concern to the OCC or FDIC, as appropriate, because of the member’s financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(b) Terms and conditions. Advances made by a Bank to a member savings association under this section shall:

(1) Be subject to all applicable collateral requirements of the Bank, this part and section 10(a) of the Bank Act (12 U.S.C. 1430(a)); and

(2) Be at the interest rate applicable to advances of similar type and maturity that are made available to other members that do not pose such a supervisory concern.

§ 1266.14 Advances to the Savings Association Insurance Fund.

(a) Authority. Upon receipt of a written request from the FDIC, a Bank may make advances to the FDIC for the use of the Savings Association Insurance Fund. The Bank shall provide a copy of such request to the FHFA.

(b) Requirements. Advances to the FDIC for the use of the Savings Association Insurance Fund shall:

(1) Bear a rate of interest not less than the Bank’s marginal cost of funds, taking into account the maturities involved and reasonable administrative costs;

(2) Have a maturity acceptable to the Bank;

(3) Be subject to any prepayment, commitment, or other appropriate fees of the Bank; and

(4) Be adequately secured by collateral acceptable to the Bank.

§ 1266.15 Liquidation of advances upon termination of membership.

If an institution’s membership in a Bank is terminated, the Bank shall determine an orderly schedule for liquidating any indebtedness of such member to the Bank; this section shall not require a Bank to call any such indebtedness prior to maturity of the advance. The Bank shall deem any such liquidation a prepayment of the member’s indebtedness, and the member shall be subject to any fees applicable to such prepayment.
§ 1266.16 Scope.
Except as otherwise provided in §§ 1266.14 and 1266.17, the requirements of subpart A apply to this subpart.

§ 1266.17 Advances to housing associates.
(a) Authority. Subject to the provisions of the Bank Act and this subpart, a Bank may make advances only to a housing associate whose principal place of business, as determined in accordance with part 1263 of this chapter, is located in the Bank’s district.
(b) Collateral requirements—(1) Advances to housing associates. A Bank may make an advance to any housing associate upon the security of the following collateral:
   (i) Mortgage loans insured by the Federal Housing Administration of HUD under title II of the National Housing Act; or
   (ii) Securities representing a whole interest in the principal and interest payments due on a pool of mortgage loans insured by the Federal Housing Administration of HUD under title II of the National Housing Act. A Bank may only accept as collateral the securities described in this paragraph (b)(1)(ii) if the housing associate provides evidence that such securities are backed solely by mortgages of the type described in paragraph (b)(1)(i) of this section.
   (2) Certain advances to SHFAs. (i) In addition to the collateral described in paragraph (b)(1) of this section, a Bank may make an advance to a housing associate that has satisfied the requirements of §1264.3(b) for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)) upon the security of the following collateral:
      (A) The collateral described in §1266.7(a)(1) or (2).
      (B) The collateral described in §1266.7(a)(3). Solely for the purpose of facilitating acceptance of such collateral, a Bank may establish a cash collateral account for a housing associate that has satisfied the requirements of §1264.3(b).
      (C) The other real estate-related collateral described in §1266.7(a)(4), provided that such collateral comprises mortgage loans on one-to-four family or multifamily residential property.
   (ii) Prior to making an advance pursuant to this paragraph (b)(2), a Bank shall obtain a written certification from the housing associate that it shall use the proceeds of the advance for the purposes described in paragraph (b)(2)(i) of this section.
   (c) Terms and conditions—(1) General. Subject to the provisions of this paragraph (c), a Bank, in its discretion, shall determine whether, and on what terms, it will make advances to a housing associate.
      (2) Advance pricing. (i) A Bank shall price advances to housing associates in accordance with the requirements for pricing advances to members set forth in §1266.5(b). Wherever the term “member” appears in §1266.5(b) the term shall be construed also to mean “housing associate.”
      (ii) A Bank shall apply the pricing criteria identified in §1266.5(b)(2) equally to all of its member and housing associate borrowers.
   (3) Limit on advances. The principal amount of any advance made to a housing associate may not exceed 90 percent of the unpaid principal of the mortgage loans or securities pledged as security for the advance. This limit does not apply to an advance made to a housing associate under paragraph (b)(2) of this section.
   (d) Transaction accounts. Solely for the purpose of facilitating the making of advances to a housing associate, a Bank may establish a transaction account for each housing associate.
   (e) Loss of eligibility—(1) Notification of status changes. A Bank shall require a housing associate that applies for an advance to agree in writing that it will promptly inform the Bank of any
change in its status as a housing associate.

(2) Verification of eligibility. A Bank may, from time to time, require a housing associate to provide evidence that it continues to satisfy all of the eligibility requirements of the Bank Act, this subpart and part 1264 of this chapter.

(3) Loss of eligibility. A Bank shall not extend a new advance or renew an existing advance to a housing associate that no longer meets the eligibility requirements of the Bank Act, this subpart and part 1264 of this chapter until the entity has provided evidence satisfactory to the Bank that it is in compliance with such requirements.


PART 1267—FEDERAL HOME LOAN BANK INVESTMENTS

Sec. 1267.1 Definitions.
1267.2 Authorized investments and transactions.
1267.3 Prohibited investments and prudential rules.
1267.4 Limitations and prudential requirements on use of derivative instruments.


SOURCE: 76 FR 29151, May 20, 2011, unless otherwise noted.

§ 1267.1 Definitions.

As used in this part:
Asset-backed security means a debt instrument backed by loans, but does not include debt instruments that meet the definition of a mortgage-backed security.

Deposits in banks or trust companies means:
(1) A deposit in another Bank;
(2) A demand account in a Federal Reserve Bank;
(3) A deposit in or sale of Federal funds to:
   (i) An insured depository institution, as defined in section 2(9) of the Bank Act, that is designated by the Bank’s board of directors;
   (ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation and is designated by the Bank’s board of directors; or
   (iii) A U.S. branch or agency of a foreign Bank as defined in the International Banking Act of 1978, as amended, (12 U.S.C. 3101 et seq.) that is subject to supervision of the Board of Governors of the Federal Reserve System and is designated by the Bank’s board of directors.

Derivative contract means generally a financial contract the value of which is derived from the values of one or more referenced assets, rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate derivative contracts, foreign exchange rate derivative contracts, equity derivative contracts, precious metals derivative contracts, commodity derivative contracts and credit derivatives, and any other instruments that pose similar risks.

Indexed principal swap means an interest rate swap agreement in which the notional principal balance amortizes based upon the prepayment experience of a specified group of mortgage-backed securities or asset-backed securities or the behavior of an interest rate index.

Interest-only stripped security means a class of mortgage-backed or asset-backed security that is allocated only the interest payments made on the underlying mortgages or loans and receives no principal payments.

Investment quality means a determination made by the Bank with respect to a security or obligation that, based on documented analysis, including consideration of the sources for repayment on the security or obligation:
(1) There is adequate financial backing so that full and timely payment of principal and interest on such security or obligation is expected; and
(2) There is minimal risk that the timely payment of principal or interest would not occur because of adverse changes in economic and financial conditions during the projected life of the security or obligation.

Mortgage-backed security means a security or instrument, including collateralized mortgage obligations
(CMOs), and Real Estate Mortgage Investment Trusts (REMICS), that represents an interest in, or is secured by, one or more pools of mortgage loans.

Principal-only stripped security means a class of mortgage-backed or asset-backed security that is allocated only the principal payments made on the underlying mortgages or loans and receives no interest payments.

Total capital shall have the meaning set forth in §1229.1 of this chapter.

§1267.2 Authorized investments and transactions.

(a) In addition to assets enumerated in parts 1266 and 955 of this title and subject to the applicable limitations set forth in this part, and in part 1272 of this chapter, each Bank may invest in:

(1) Obligations of the United States;

(2) Deposits in banks or trust companies;

(3) Obligations, participations or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

(4) Mortgages, obligations, or other securities that are, or ever have been, sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 or 1455);

(5) Stock, obligations, or other securities of any small business investment company formed pursuant to 15 U.S.C. 681, to the extent such investment is made for purposes of aiding members of the Bank;

(b) Subject to any applicable limitations set forth in this part and in part 1272 of this chapter, a Bank also may enter into the following types of transactions:

(1) Derivative contracts;

(2) Standby letters of credit, pursuant to the requirements of part 1269 of this title;

(3) Forward asset purchases and sales;

(4) Commitments to make advances; and

(5) Commitments to make or purchase other loans.

Effective Date Note: At 81 FR 91688, Dec. 19, 2016, §1267.2 was amended in paragraph (a) by removing “955 of this title” and adding in its place “1268 of this chapter”, effective Jan. 18, 2017.

§1267.3 Prohibited investments and prudential rules.

(a) Prohibited investments. A Bank may not invest in:

(1) Instruments that provide an ownership interest in an entity, except for investments described in §1265.3(e) and (f) of this chapter;

(2) Instruments issued by non-United States entities, except United States branches and agency offices of foreign commercial banks;

(3) Debt instruments that are not investment quality, except:

(i) Investments described in §1265.3(e) of this chapter; and

(ii) Debt instruments that a Bank determined became less than investment quality because of developments or events that occurred after acquisition of the instrument by the Bank;

(4) Whole mortgages or other whole loans, or interests in mortgages or loans, except:

(i) Acquired member assets;

(ii) Investments described in §1265.3(e) of this chapter;

(iii) Marketable direct obligations of state, local, or Tribal government units or agencies, that are investment quality, where the purchase of such obligations by the Bank provides to the issuer the customized terms, necessary liquidity, or favorable pricing required to generate needed funding for housing or community lending;

(iv) Mortgage-backed securities, or asset-backed securities collateralized by manufactured housing loans or home equity loans, that meet the definition of the term “securities” under 15 U.S.C. 77b(a)(1) and are not otherwise prohibited under paragraphs (a)(5) through (a)(7) of this section; and

(v) Loans held or acquired pursuant to section 12(b) of the Bank Act (12 U.S.C. 1432(b)).
Federal Housing Finance Agency

§ 1267.4 Limitations and prudential requirements on use of derivative instruments.

(a) Non-speculative use. Derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank.

(b) Additional Prohibitions. (1) A Bank may not enter into interest rate swaps that amortize according to behavior of instruments described in §1267.3(a)(5) or (6) of this part.

(2) A Bank may not enter into indexed principal swaps that have average lives that vary by more than six years under an assumed instantaneous change in interest rates of 300 basis points, unless they are entered into in conjunction with the issuance of consolidated obligations or the purchase of permissible investments or entry into a permissible transaction in which all interest rate risk is passed through to the investor or counterparty.

(c) Documentation requirements. (1) Derivative transactions with a single counterparty shall be governed by a single master agreement when practicable.

(2) A Bank’s agreement with the counterparty for over-the-counter derivative contracts shall include:

(i) A requirement that market value determinations and subsequent adjustments of collateral be made at least on a monthly basis;

(ii) A statement that failure of a counterparty to meet a collateral call will result in an early termination event;

(iii) A description of early termination pricing and methodology, with the methodology reflecting a reasonable estimate of the market value of the over-the-counter derivative contract at termination (standard International Swaps and Derivatives Association, Inc. language relative to early termination pricing and methodology.

[76 FR 29151, May 20, 2011, as amended at 79 FR 67009, Nov. 8, 2013]

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[76 FR 29151, May 20, 2011, as amended at 79 FR 67009, Nov. 8, 2013]
may be used to satisfy this require-
ment; and

(iv) A requirement that the Bank’s
consent be obtained prior to the trans-
fer of an agreement or contract by a
counterparty.

PART 1268—ACQUIRED MEMBER
ASSETS (Eff. 1/18/17)

Sec.
1268.1 Definitions.
1268.2 Authorization for acquired member
assets.
1268.3 Asset requirement.
1268.4 Member or housing associate nexus
requirement.
1268.5 Credit risk-sharing requirement.
1268.6 Servicing of AMA loans.
1268.7 Reporting requirements for acquired
member assets.
1268.8 Administrative transactions and
agreements between Banks.

AUTHORITY: 12 U.S.C. 1430, 1430b, 1431, 4511,
4513, 4526.

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otherwise noted.

EFFECTIVE DATE NOTE: At 81 FR 91688, Dec.
19, 2016, part 1268 was added effective Jan. 18,
2017.

§ 1268.1 Definitions.
As used in this part:

Affiliate means any business entity
that controls, is controlled by, or is
under common control with, a member.

AMA investment grade means a deter-
mination made by the Bank with re-
spect to an asset or pool, based on doc-
umented analysis, including consider-
atation of applicable insurance, credit
enhancements, and other sources for
repayment on the asset or pool, that
the Bank has a high degree of con-
fidence that it will be paid principal
and interest in all material respects,
even under reasonably likely adverse
changes to expected economic condi-
tions.

AMA product means a structure that
is defined by a specific set of terms and
conditions that comply with this part
1268 and that is established by a Bank
for purposes of governing the Bank’s
purchase of AMA-eligible loans.

AMA program means a Bank-estab-
lished program to buy mortgage loans
that meet the requirements of this
part, which may comprise multiple
AMA products.

Expected losses means the loss on the
asset or pool given the expected future
economic and market conditions in the
model or methodology used by the
Bank under §1268.5 and applicable to an
AMA product.

Participating financial institution
means a member or housing associate
of a Bank that is authorized to sell,
credit enhance, or service mortgage
loans to or for its own Bank through an
AMA program, or a member or housing
associate of another Bank that has
been authorized to sell, credit enhance,
or service mortgage loans to or for the
other Bank pursuant to an agreement
between the Bank acquiring the AMA
product and the Bank of which the sell-
ing institution is a member or housing
associate.

Pool means a group of loans acquired
under one or more loan funding com-
mittments, contractual agreements, or
similar arrangements.

Qualified insurer means an insurer
that a Bank approves in accordance
with §1268.5(e)(1) to provide any form of
mortgage insurance coverage on assets
and pools purchased under an AMA
program.

Residential real property has the
meaning set forth in §1266.1 of this
chapter.

§ 1268.2 Authorization for acquired
member assets.

(a) General. Each Bank is authorized
to invest in assets that qualify as
AMA, subject to the requirements of
this part and part 1272 of this chapter.

(b) Grandfathered transactions. Not-
withstanding paragraph (a), a Bank
may continue to hold as AMA assets
that were previously authorized by the
Federal Housing Finance Board or
FHFA for purchase as AMA, provided
that the assets were purchased, and
continue to be held, in compliance with
that authorization.

§ 1268.3 Asset requirement.

Assets that qualify as AMA shall be
limited to the following:

(a) Whole loans that are eligible to
secure advances under §1266.7(a)(1)(i),
(a)(2)(i), (a)(4), or (b)(1) of this chan-
ter, excluding:

1. Single-family mortgage loans
where the loan amount exceeds the
limits established pursuant to 12 U.S.C. 1717(b)(2), unless the loan is guaranteed or insured by an agency or department of the U.S. government, in which case the limits in 12 U.S.C. 1717(b)(2) do not apply; and
(2) Loans made to an entity, or secured by property, not located in a state;
(b) Whole loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property under applicable state law;
(c) State and local housing finance agency bonds; or
(d) Certificates representing interests in whole loans if:
(1) The loans qualify as AMA under paragraphs (a) or (b) of this section and meet the nexus requirement of §1268.4; and
(2) The certificates:
(i) Meet the credit enhancement requirements of §1268.5;
(ii) Are issued pursuant to an agreement between the Bank and a participating financial institution to share risks consistent with the requirements of this part; and
(iii) Are acquired substantially by the initiating Bank or Banks.

§1268.4 Member or housing associate nexus requirement.

(a) General provision. To qualify as AMA, any assets described in §1268.3 must be acquired in a purchase or funding transaction only from:
(1) A participating financial institution, provided that the asset was:
(i) Originated or issued by, through, or on behalf of the participating financial institution, or an affiliate thereof; or
(ii) Held for a valid business purpose by the participating financial institution, or an affiliate thereof, prior to acquisition by the Bank; or
(2) Another Bank, provided that the asset was originally acquired by the selling Bank consistent with this section.

(b) Special provision for housing finance agency bonds. In the case of housing finance agency bonds acquired by a Bank from a housing associate located in the district of another Bank (local Bank), the arrangement required by the definition of “participating financial institution” in §1268.1 between the acquiring Bank and the local Bank may be reached in accordance with the following process:
(1) The housing finance agency shall first offer the local Bank right of first refusal to purchase, or negotiate the terms of, its proposed bond offering;
(2) If the local Bank indicates, within three business days, it will negotiate in good faith to purchase the bonds, the housing finance agency may not offer to sell or negotiate the terms of a purchase with another Bank; and
(3) If the local Bank declines the offer, or has failed to respond within three business days, the acquiring Bank will be considered to have an arrangement with the local Bank for purposes of this section and may offer to buy or negotiate the terms of a bond sale with the housing finance agency.

§1268.5 Credit risk-sharing requirement.

(a) General credit risk-sharing requirement. For each AMA product, the Bank shall implement and have in place at all times, a credit risk-sharing structure that:
(1) Requires a participating financial institution to provide the credit enhancement necessary to enhance an eligible asset or pool to the credit quality specified by the terms and conditions of the AMA product, provided, however, that such credit enhancement results in the eligible asset or pool being at least AMA investment grade, as defined in §1268.1; and
(2) Meets the requirements of this section.

(b) Determination of necessary credit enhancement. (1) No later than 30 calendar days after the purchase of the asset or after a pool closes, the Bank shall determine the total credit enhancement necessary to enhance the asset or pool to at least AMA investment grade and to be consistent with the terms and conditions of a specific AMA product. The enhancement shall be for the life of the asset or pool. The Bank shall make this determination for each AMA product using a model and methodology that the Bank deems appropriate, subject to paragraph (f) of this section.
(2) A Bank shall document its basis for concluding that the contractual credit enhancement required from each participating financial institution with regard to a particular asset or pool will equal or exceed the credit enhancement level specified in the terms and conditions of the AMA product and determined in accordance with paragraph (b)(1) of this section.

(c) Credit risk-sharing structure. Under any credit risk-sharing structure, the credit enhancement provided by the participating financial institution shall at all times meet the following requirements:

(1) The participating financial institution that is providing the credit enhancement required under this paragraph (c) shall in all cases:

(i) Bear the direct economic consequences of actual credit losses on the asset or pool:

(A) From the first dollar of loss up to the amount of expected losses; or

(B) Immediately following expected losses, but in an amount equal to or exceeding the amount of expected losses; and

(ii) Fully secure its direct credit enhancement obligation in accordance with §1266.7; and

(2) The participating financial institution also may provide all or a portion of the credit enhancement, with the approval of the Bank, by:

(i) Contracting with an insurance affiliate of that participating financial institution to provide an enhancement, but only where such insurance is positioned in the credit risk-sharing structure so as to cover only losses remaining after the participating financial institution has borne losses as required under paragraph (c)(1)(i) of this section;

(ii) Purchasing loan-level insurance only where:

(A) The participating financial institution is legally obligated at all times to maintain such insurance with a qualified insurer;

(B) Such insurance insures that portion of the required credit enhancement attributable to the geographic concentration and size of the pool; and

(C) Such insurance is positioned last in the credit enhancement structure so as to cover only those losses remaining after all other elements of the credit enhancement structure have been exhausted;

(iv) Contracting with another participating financial institution in the Bank’s district to provide a credit enhancement consistent with this section, in return for compensation; or

(v) Contracting with a participating financial institution in another Bank’s district, pursuant to an arrangement between the two Banks, to provide a credit enhancement consistent with this section, in return for compensation.

(d) Loans guaranteed or insured by a department or agency of the U.S. government. Instead of the structure set forth in paragraph (c) of this section, a participating financial institution also may provide the required credit enhancement through loan-level insurance that is issued by an agency or department of the U.S. government or is a guarantee from an agency or department of the U.S. government, provided that the government insurance or guarantee remains in place for as long as the Bank owns the loan.

(e) Qualified insurers. (1) Within one year of January 18, 2017, each Bank must develop, and subsequently maintain, written financial and operational standards that an insurer must meet for the Bank to approve it as a qualified insurer. A Bank may delegate responsibility for development of these standards and approval of qualified insurers to another Bank or group of Banks pursuant to §1268.8.

(356)
(2) Only qualified insurers may provide private loan insurance on AMA eligible assets or the loan or pool insurance allowed as part of the credit enhancement structure for AMA products under paragraphs (c)(2)(ii) or (iii) of this section.

(f) Appropriate methodology for calculating credit enhancement. A Bank shall use a model and methodology for estimating the amount of credit enhancement for an asset or pool. A Bank shall provide to FHFA upon request information about the model and methodology, including and without limitation results of any model runs and the results of any tests of the model performed by the Bank. FHFA reserves the right to direct a Bank to make changes to its model and methodology, and a Bank promptly shall institute any such FHFA-directed changes.

§ 1268.6 Servicing of AMA loans.

(a) Servicing of AMA loans may be performed by or transferred to any institution, including an institution that is not a member of the Bank System, provided that the loans, after such transfer, continue to meet all requirements to qualify as AMA under §§ 1268.3, 1268.4, and 1268.5.

(b) The transfer of mortgage servicing rights and responsibilities must be approved by the Bank or Banks that own the loan or a participation interest in the loan.

(c) A Bank shall have in place policies and procedures to ensure that the transfer of mortgage servicing rights does not negatively affect the credit enhancement on the loans in question or substantially increase the Bank’s exposure to the credit risk for the asset or pool.

§ 1268.7 Reporting requirements for acquired member assets.

Each Bank shall report information related to AMA in accordance with the instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

§ 1268.8 Administrative transactions and agreements between Banks.

(a) Delegation of administrative duties. A Bank may delegate the administration of an AMA program to another Bank whose administrative office has been examined and approved by FHFA, or previously examined and approved by the Federal Housing Finance Board, to process AMA transactions. The existence of such a delegation, or the possibility that such a delegation may be made, must be disclosed to any potential participating financial institution as part of any AMA-related agreements signed with that participating financial institution. A Bank may contract with one or more parties, including without limitation another Bank, to provide services related to the administration of its own AMA program or the AMA program of another Bank for which it has been delegated administrative responsibility, without the necessity for further disclosure to the participating financial institutions.

(b) Termination of agreements. Any agreement made between two or more Banks in connection with the administration of any AMA program may be terminated by any party after a reasonable notice period.

(c) Delegation of pricing authority. A Bank that has delegated its AMA pricing function to another Bank shall retain a right to refuse to acquire AMA at prices it does not consider appropriate, pursuant to contractual provisions among the parties.

PART 1269—STANDBY LETTERS OF CREDIT

§ 1269.1 Definitions.

As used in this part:
§ 1269.2 Standby letters of credit on behalf of members.

(a) Authority and purposes. Each Bank is authorized to issue or confirm on behalf of members standby letters of credit that comply with the requirements of this part, for any of the following purposes:

(1) To assist members in facilitating residential housing finance;

(2) To assist members in facilitating community lending;

(3) To assist members with asset/liability management; or

(4) To provide members with liquidity or other funding.

(b) Fully secured. A Bank, at the time it issues or confirms a standby letter of credit on behalf of a member, shall obtain and maintain a security interest in collateral that is sufficient to secure fully the member’s unconditional obligation described in §1269.4(a)(2) of this part, and that complies with the requirements set forth in paragraph (c) of this section.

(c) Eligible collateral.

(1) Any standby letter of credit issued or confirmed on behalf of a member may be secured in accordance with the requirements for advances under §1266.7 of this chapter.

(2) A standby letter of credit issued or confirmed on behalf of a member for a purpose described in paragraphs (a)(1) or (a)(2) of this section may, in addition to the collateral described in paragraph (c)(1) of this section, be secured by obligations of state or local government units or agencies, where such obligations have a readily ascertainable

make payment on account of any default by the applicant in the performance of an obligation. The term standby letter of credit does not include a commercial letter of credit, or any short-term self-liquidating instrument used to finance the movement of goods.
§ 1269.5 Additional provisions applying to all standby letters of credit.

(a) Requirements. Each standby letter of credit issued or confirmed by a Bank shall:

(1) Contain a specific expiration date, or be for a specific term; and

(2) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity.

(b) Additional collateral provisions. (1) A Bank may take such steps as it deems necessary to protect its secured position on standby letters of credit, including requiring additional collateral, whether or not such additional collateral conforms to the requirements of §1269.2 or §1269.3 of this part.

(2) Collateral pledged by a member or housing associate to secure a letter of credit, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course.

§ 1269.3 Standby letters of credit on behalf of housing associates.

(a) Housing associates. Each Bank is authorized to issue or confirm on behalf of housing associates standby letters of credit that are fully secured by collateral described in §1266.17(b)(1)(i) or (ii) of this chapter, and that otherwise comply with the requirements of this part, for any of the following purposes:

(1) To assist housing associates in facilitating residential housing finance;

(2) To assist housing associates in facilitating community lending;

(3) To assist housing associates with asset/liability management; or

(4) To provide housing associates with liquidity or other funding.

(b) SHFA associates. Each Bank is authorized to issue or confirm on behalf of SHFA associates standby letters of credit that are fully secured by collateral described in §1266.17(b)(2)(i)(A), (B) or (C) of this chapter, and that otherwise comply with the requirements of this part, for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)).

§ 1269.4 Obligation to Bank under all standby letters of credit.

(a) Obligation to reimburse. A Bank may issue or confirm a standby letter of credit only on behalf of a member or housing associate that has:

(1) Established with the Bank a cash account pursuant to §§1266.17(b)(2)(i)(B), 1266.17(d), or 1270.3 of this chapter; and

(2) Assumed an unconditional obligation to reimburse the Bank for value given by the Bank to the beneficiary under the terms of the standby letter of credit by depositing immediately available funds into the account described in paragraph (a)(1) of this section not later than the date of the Bank’s payment of funds to the beneficiary.

(b) Prompt action to recover funds. If a member or housing associate fails to fulfill the obligation described in paragraph (a)(2) of this section, the Bank shall take action promptly to recover the funds that such member or housing associate is obligated to repay.

(c) Obligation financed by advance. Notwithstanding the obligations and duties of the Bank and its member or housing associate under paragraphs (a) and (b) of this section, the Bank may, at its discretion, permit such member or housing associate to finance repayment of the obligation described in paragraph (a)(2) of this section by receiving an advance that complies with sections 10 or 10b of the Bank Act (12 U.S.C. 1430, 1430(b)) and part 1266 of this title.

credit issued or confirmed on its behalf by a Bank shall be subject to the provisions of §§1266.7(d), 1266.7(e), 1266.8, 1266.9 and 1266.10 of this chapter.


PART 1270—LIABILITIES

Subpart A—Definitions

§1270.1 Definitions.

As used in this part, unless the context otherwise requires or indicates:

Adverse Claim means a claim that a claimant has a property interest in a Book-entry consolidated obligation and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

Book-entry consolidated obligation means a consolidated obligation maintained in the book-entry system of the Federal Reserve Banks.

Consolidated obligation means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and in accordance with any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

Deposits in banks or trust companies means:

1. A deposit in another Bank;
2. A demand account in a Federal Reserve Bank;
3. A deposit in, or a sale of Federal funds to:
   (i) An insured depository institution, as defined in section 2(9)(A) of the Bank Act (12 U.S.C. 1422(9)(A)), that is designated by a Bank’s board of directors;
   (ii) A trust company that is a member of the Federal Reserve System or insured by the FDIC, and is designated by a Bank’s board of directors; or
   (iii) A U.S. branch or agency of a foreign bank, as defined in the International Banking Act of 1978, as amended (12 U.S.C. 3101 et seq.), that is subject to the supervision of the Federal Reserve Board, and is designated by a Bank’s board of directors.

Entitlement Holder means a Person or a Bank to whose account an interest in a Book-entry consolidated obligation is credited on the records of a Securities Intermediary.

Federal Reserve Bank means a Federal Reserve Bank or branch, acting as fiscal agent for the Office of Finance, unless otherwise indicated.
Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains Book-entry Securities accounts and transfers Book-entry Securities.

Federal Reserve Board means the Board of Governors of the Federal Reserve System.

Funds account means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, Book-entry Securities transaction fees, or principal and interest payments.

Non-complying Bank means a Bank that has failed to provide the liquidity certification as required under §1270.10(b)(1).

Office of Finance means the Office of Finance, a joint office of the Banks established under part 1273 of this chapter and referenced in the Bank Act and the Safety and Soundness Act, including the Office of Finance acting as agent of the Banks in all matters relating to the issuance of Book-entry consolidated obligations and in the performance of all other necessary and proper functions relating to Book-entry consolidated obligations, including the payment of principal and interest due thereon.

Participant means a Person or a Bank that maintains a Participant’s Securities Account with a Federal Reserve Bank.

Participant’s Securities Account means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry consolidated obligations held for a Participant are or may be credited.

Person means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include a Bank, the Director, FHFA, the Office of Finance, the United States, or a Federal Reserve Bank.

Repurchase agreement means an agreement in which a Bank sells securities and simultaneously agrees to repurchase those securities or similar securities at an agreed upon price, with or without a stated time for repurchase.

Revised Article 8 means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611.


Securities Intermediary means:

(1) A Person that is registered as a “clearing agency” under the Federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a Book-entry consolidated obligation that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or (2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the Federal securities laws), including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

Security Entitlement means the rights and property interest of an Entitlement Holder with respect to a Book-entry consolidated obligation.

Transfer Message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry consolidated obligation, as set forth in Federal Reserve Bank Operating Circulars.

[76 FR 18369, Apr. 4, 2011, as amended at 78 FR 2324, Jan. 11, 2013; 78 FR 67009, Nov. 8, 2013]
§ 1270.2 Authorized liabilities.

As a source of funds for business operations, each Bank is authorized to incur liabilities by:

(a) Accepting proceeds from the issuance of consolidated obligations issued in accordance with this part;

(b) Accepting time or demand deposits from members, other Banks or instrumentalities of the United States, and cash accounts from associates or members pursuant to §§1266.17(b)(2)(i)(B), 1266.17(d) and 1269.4(a)(1) of this chapter, or §1270.3 of this part, or from other institutions for which the Bank is providing correspondent services pursuant to section 11(e) of the Bank Act (12 U.S.C. 1431(e));

(c) Purchasing Federal funds; and

(d) Entering into repurchase agreements.

§ 1270.3 Deposits from members.

(a) Banks may accept demand and time deposits from members, reserving the right to require notice of intention to withdraw any part of time deposits. Rates of interest paid on all deposits shall be set by the Bank’s board of directors (or, between regular meetings thereof, by a committee of directors selected by the board) or by the Bank President, if so authorized by the board. Unless otherwise specified by the board, a Bank President may delegate to any officer or employee of the Bank any authority he possesses under this section.

(b) Each Bank shall at all times have at least an amount equal to the current deposits received from its members invested in:

(1) Obligations of the United States;

(2) Deposits in banks or trust companies; or

(3) Advances with a remaining maturity not to exceed five years that are made to members in conformity with part 1266 of this chapter.

§ 1270.4 Issuance of consolidated obligations.

(a) Consolidated obligations issued by the Banks—(1) Subject to the provisions of this part and such other rules, regulations, terms, and conditions as the Director may prescribe, the Banks may issue joint debt under section 11(c) of the Bank Act (12 U.S.C. 1431(c)), which shall be consolidated obligations, on which the Banks shall be jointly and severally liable in accordance with §1270.10 of this part.

(2) Consolidated obligations shall be issued only through the Office of Finance, as agent of the Banks pursuant to this part and part 1273 of this chapter.

(3) All consolidated obligations shall be issued in pari passu.

(b) Negative pledge requirement. Each Bank shall at all times maintain assets described in paragraphs (b)(1) through (b)(5) of this section free from any lien or pledge, in an amount at least equal to a pro rata share of the total amount of currently outstanding consolidated obligations and equal to such Bank’s participation in all such consolidated obligations outstanding, provided that any assets that are subject to a lien or pledge for the benefit of the holders of any issue of consolidated obligations shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this paragraph (b). Eligible assets are:

(1) Cash;

(2) Obligations of or fully guaranteed by the United States;

(3) Secured advances;

(4) Mortgages as to which one or more Banks have any guaranty or insurance, or commitment therefor, by the United States or any agency thereof; and

(5) Investments described in section 16(a) of the Bank Act (12 U.S.C. 1436(a)).

[76 FR 18369, Apr. 4, 2011, as amended at 78 FR 67009, Nov. 8, 2013]

§ 1270.5 Bank operations.

The Banks, individually and collectively, shall operate in such manner
and take any actions necessary, including without limitation reducing leverage, to ensure that consolidated obligations maintain a high level of acceptance by financial markets and are generally perceived by investors as presenting a low level of credit risk.

[78 FR 67009, Nov. 8, 2013]

§ 1270.6 Transactions in consolidated obligations.

The general regulations of the Department of the Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357 regarding book-entry procedure, are hereby incorporated into this subpart C of this part, so far as applicable and as necessarily modified to relate to consolidated obligations, as the regulations of FHFA for similar transactions on consolidated obligations. The book-entry procedure for consolidated obligations is contained in subpart D of this part.

§ 1270.7 Lost, stolen, destroyed, mutilated or defaced consolidated obligations.

United States statutes and regulations of the Department of the Treasury now or hereafter in force governing relief on account of the loss, theft, destruction, mutilation or defacement of United States securities, so far as applicable and as necessarily modified to relate to consolidated obligations, are hereby adopted as the regulations of FHFA for the issuance of substitute consolidated obligations or the payment of lost, stolen, destroyed, mutilated or defaced consolidated obligations.

§ 1270.8 Administrative provision.

The Secretary of the Treasury or the Acting Secretary of the Treasury is hereby authorized and empowered, as the agent of FHFA and the Banks, to administer §§ 1270.6 and 1270.7, and to delegate such authority at their discretion to other officers, employees, and agents of the Department of the Treasury. Any such regulations may be waived on behalf of FHFA and the Banks by the Secretary of the Treasury, the Acting Secretary of the Treasury, or by an officer of the Department of the Treasury authorized to waive similar regulations with respect to United States securities, but only in any particular case in which a similar regulation with respect to United States securities would be waived. The terms “securities” and “bonds” as used in this section shall, unless the context otherwise requires, include and apply to coupons and interim certificates.

§ 1270.9 Conditions for issuance of consolidated obligations.

(a) The Office of Finance board of directors shall authorize the offering for current and forward settlement (up to 12 months) or the reopening of consolidated obligations, as necessary, and authorize the maturities, rates of interest, terms and conditions thereof, subject to the provisions of 31 U.S.C. 9108.

(b) Consolidated obligations may be offered for sale only to the extent that Banks are committed to take the proceeds.

(c) Consolidated obligations shall not be purchased by any Bank as part of an initial issuance whether such consolidated obligation is purchased directly from the Office of Finance or indirectly from an underwriter.

(d) If the Banks issue consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, then any Bank accepting proceeds from those consolidated obligations shall meet the following requirements with regard to such consolidated obligations:

(1) The relevant foreign exchange, equity price or commodity price risks associated with the consolidated obligation must be hedged in accordance with §1267.4 of this chapter;

(2) If there is a default on the part of a counterparty to a contract hedging the foreign exchange, equity or commodity price risk associated with a consolidated obligation, the Bank shall enter into a replacement contract in a timely manner and as soon as market conditions permit.

[76 FR 18369, Apr. 4, 2011, as amended at 81 FR 76298, Nov. 2, 2016]

§ 1270.10 Joint and several liability.

(a) In general—(1) Each and every Bank, individually and collectively, has an obligation to make full and
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timely payment of all principal and interest on consolidated obligations when due.

(2) Each and every Bank, individually and collectively, shall ensure that the timely payment of principal and interest on all consolidated obligations is given priority over, and is paid in full in advance of, any payment to or redemption of shares from any shareholder.

(3) The provisions of this part shall not limit, restrict or otherwise diminish, in any manner, the joint and several liability of all of the Banks on any consolidated obligation.

(b) Certification and reporting—(1) Before the end of each calendar quarter, and before declaring or paying any dividend for that quarter, the President of each Bank shall certify in writing to FHFA that, based on known current facts and financial information, the Bank will remain in compliance with the liquidity requirements set forth in section 11(g) of the Act (12 U.S.C. 1431(g)), and any regulations (as the same may be amended, modified or replaced), and will remain capable of making full and timely payment of all of its current obligations, including direct obligations, coming due during the next quarter.

(2) A Bank shall immediately provide written notice to FHFA if at any time the Bank:

(i) Is unable to provide the certification required by paragraph (b)(1) of this section;

(ii) Projects at any time that it will fail to comply with statutory or regulatory liquidity requirements, or will be unable to timely and fully meet all of its current obligations, including direct obligations, due during the quarter;

(iii) Actually fails to comply with statutory or regulatory liquidity requirements or to timely and fully meet all of its current obligations, including direct obligations, due during the quarter;

(iv) Negotiates to enter or enters into an agreement with one or more other Banks to obtain financial assistance to meet its current obligations, including direct obligations, due during the quarter; the notice of which shall be accompanied by a copy of the agreement, which shall be subject to the approval of FHFA.

(c) Consolidated obligation payment plans—(1) A Bank promptly shall file a consolidated obligation payment plan for FHFA approval:

(i) If the Bank becomes a non-complying Bank as a result of failing to provide the certification required in paragraph (b)(1) of this section;

(ii) If the Bank becomes a non-complying Bank as a result of being required to provide the notice required pursuant to paragraph (b)(2) of this section, except in the event that a failure to make a principal or interest payment on a consolidated obligation when due was caused solely by a temporary interruption in the Bank’s debt servicing operations resulting from an external event such as a natural disaster or a power failure; or

(iii) If FHFA determines that the Bank will cease to be in compliance with the statutory or regulatory liquidity requirements, or will lack the capacity to timely and fully meet all of its current obligations, including direct obligations, due during the quarter.

(2) A consolidated obligation payment plan shall specify the measures the non-complying Bank will undertake to make full and timely payments of all of its current obligations, including direct obligations, due during the applicable quarter.

(3) A non-complying Bank may continue to incur and pay normal operating expenses incurred in the regular course of business (including salaries, benefits, or costs of office space, equipment and related expenses), but shall not incur or pay any extraordinary expenses, or declare, or pay dividends, or redeem any capital stock, until such time as FHFA has approved the Bank’s consolidated obligation payment plan or ordered another remedy, and all of the non-complying Bank’s direct obligations have been paid.

(d) FHFA payment orders; Obligation to reimburse—(1) FHFA, in its discretion and notwithstanding any other provision in this section, may at any time order any Bank to make any principal or interest payment due on any consolidated obligation.
To the extent that a Bank makes any payment on any consolidated obligation on behalf of another Bank, the paying Bank shall be entitled to reimbursement from the non-complying Bank, which shall have a corresponding obligation to reimburse the Bank providing assistance, to the extent of such payment and other associated costs (including interest to be determined by FHFA).

(e) Adjustment of equities—(1) Any non-complying Bank shall apply its assets to fulfill its direct obligations.

(2) If a Bank is required to meet, or otherwise meets, the direct obligations of another Bank due to a temporary interruption in the latter Bank's debt servicing operations (e.g., in the event of a natural disaster or power failure), the assisting Bank shall have the same right to reimbursement set forth in paragraph (d)(2) of this section.

(3) If FHFA determines that the assets of a non-complying Bank are insufficient to satisfy all of its direct obligations as set forth in paragraph (e)(1) of this section, then FHFA may allocate the outstanding liability among the remaining Banks on a pro rata basis in proportion to each Bank's participation in all consolidated obligations outstanding as of the end of the most recent month for which FHFA has data, or otherwise as FHFA may prescribe.

(f) Reservation of authority. Nothing in this section shall affect the Director's authority to adjust equities between the Banks in a manner different than the manner described in paragraph (e) of this section, or to take enforcement or other action against any Bank pursuant to the Director's authority under the Safety and Soundness Act or the Bank Act, or otherwise to supervise the Banks and ensure that they are operated in a safe and sound manner.

(g) No rights created—(1) Nothing in this part shall create or be deemed to create any rights in any third party.

(2) Payments made by a Bank toward the direct obligations of another Bank are made for the sole purpose of discharging the joint and several liability of the Banks on consolidated obligations.

(3) Compliance, or the failure to comply, with any provision in this section shall not be deemed a default under the terms and conditions of the consolidated obligations.

§ 1270.11 Savings clause.

Any agreements or other instruments entered into in connection with the issuance of consolidated obligations prior to the amendments made to this part shall continue in effect with respect to all consolidated obligations issued under the authority of section 11 of the Bank Act (12 U.S.C. 1431) and pursuant to this part. References to consolidated obligations in such agreements and instruments shall be deemed to refer to all joint and several obligations of the Banks.

Subpart D—Book-Entry Procedure for Consolidated Obligations

§ 1270.12 Law governing rights and obligations of Banks, FHFA, Office of Finance, United States and Federal Reserve Banks; rights of any Person against Banks, FHFA, Office of Finance, United States and Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the rights and obligations of the Banks, FHFA, the Director, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry consolidated obligation or Security Entitlement and the operation of the Book-entry system, as it applies to consolidated obligations; and the rights of any Person, including a Participant, against the Banks, FHFA, the Director, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry consolidated obligation or Security Entitlement and the operation of the Book-entry system, as it applies to consolidated obligations; are governed solely by regulations of FHFA, including the regulations of this part 1270, the applicable offering notice, applicable procedures established by the Office of Finance, and Federal Reserve Bank Operating Circulars.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to
§ 1270.13 Law governing other interests.

(a) To the extent not inconsistent with this part 1270, the law (not including the conflict-of-law rules) of the Securities Intermediary’s jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection, and priority of a security interest in a Security Entitlement.

(b) The following rules determine a “Securities Intermediary’s jurisdiction” for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary’s jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary’s jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraphs (b)(1) or (b)(2) of this section, the Securities Intermediary’s jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder’s account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraphs (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder’s account as provided in paragraph (b)(3) of this section, the Securities Intermediary’s jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant’s interest in a Bank Book-entry Security is a Security Entitlement.
§ 1270.14 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry consolidated obligation has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including, without limitation, deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the Securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the Security. For purposes of this paragraph (b), an “authorized representative of the United States” is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Banks, FHFA, the Director, the Office of Finance, the United States and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in a Security Entitlement in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the Securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in §1270.12(b) or §1270.13. The perfection, effect of perfection or non-perfection, and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation for all purposes under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 1270.15 Obligations of the Banks and the Office of Finance; no Adverse Claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in §1270.14(c)(1), for the purposes of this part 1270, the Banks, the Office of Finance and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry consolidated obligations has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereto and otherwise to exercise all the rights and powers with respect to the Security, notwithstanding any information or notice to the contrary. Neither the Banks, FHFA, the Director, the Office of Finance, the United States, nor the Federal Reserve Banks are liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to Book-entry consolidated obligations in a Participant’s Securities Account, including any such claim arising as a result of the transfer
or disposition of a Book-entry consolidated obligation by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Banks and the Office of Finance to make payments of interest and principal with respect to Book-entry consolidated obligations is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry consolidated obligations is either credited by a Federal Reserve Bank to a Funds Account maintained at the Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry consolidated obligations are paid, either at maturity or upon redemption, in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant’s Securities Account in which they are maintained and by either crediting the amount of the proceeds, including both principal and interest, where applicable, to a Funds Account at the Federal Reserve Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant is required in connection with the payment of a Book-entry consolidated obligation, unless otherwise expressly required.

§ 1270.16 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Office of Finance: To perform functions with respect to the issuance of Book-entry consolidated obligations, in accordance with the terms of the applicable offering notice and with procedures established by the Office of Finance; to service and maintain Book-entry consolidated obligations in accounts established for such purposes; to make payments of principal, interest and redemption premium (if any), as directed by the Office of Finance; to effect transfer of Book-entry consolidated obligations between Participants’ Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Office of Finance.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this part 1270, governing the details of its handling of Book-entry consolidated obligations, Security Entitlements, and the operation of the Book-entry system under this part 1270.

§ 1270.17 Liability of Banks, FHFA, Office of Finance and Federal Reserve Banks.

The Banks, FHFA, the Director, the Office of Finance and the Federal Reserve Banks may rely on the information provided in a tender, transaction request form, other transaction documentation, or Transfer Message, and are not required to verify the information. Neither the Banks, FHFA, the Director, the Office of Finance, the United States, nor the Federal Reserve Banks shall be liable for any action taken in accordance with the information set out in a tender, transaction request form, other transaction documentation, or Transfer Message, or evidence submitted in support thereof.

§ 1270.18 Additional requirements; notice of attachment for Book-entry consolidated obligations.

(a) Additional requirements. In any case or any class of cases arising under the regulations in this part 1270, the Office of Finance may require such additional evidence and a bond of indemnity, with or without surety, as may in its judgment, or in the judgment of the Banks or FHFA, be necessary for the protection of the interests of the Banks, FHFA, the Office of Finance or the United States.

(b) Notice of attachment. The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor’s securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor’s interest may be reached by legal process upon the secured party. The regulations in this part 1270 do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.
§ 1270.19 Reference to certain Department of Treasury commentary and determinations.

Notwithstanding provisions in §1270.6 regarding Department of Treasury regulations set forth in 31 CFR part 357:

(a) The Department of Treasury TRADES Commentary (31 CFR part 357, appendix B) addressing the Department of Treasury regulations governing book-entry procedure for Treasury Securities is hereby referenced, so far as applicable and as necessarily modified to relate to Book-entry consolidated obligations, as an interpretive aid to this subpart D of this part.

(b) Determinations of the Department of Treasury regarding whether a State shall be considered to have adopted Revised Article 8 for purposes of 31 CFR part 357, as published in the Federal Register or otherwise, shall also apply to this subpart D of this part.

§ 1270.20 Consolidated obligations are not obligations of the United States or guaranteed by the United States.

Consolidated obligations are not obligations of the United States and are not guaranteed by the United States.

PART 1271—MISCELLANEOUS FEDERAL HOME LOAN BANK OPERATIONS AND AUTHORITIES

Subpart A—Collection, Settlement, and Processing of Payment Instruments

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§ 1271.1 Definitions.

Unless otherwise defined in this subpart, the terms used in this subpart shall conform, in the following order, to: Regulations of FHFA, the Uniform Commercial Code, regulations of the Federal Reserve System, and general banking usage. As used in this subpart:

Account processing includes charging, crediting, and settling of member or eligible institution accounts, excluding individual customer accounts.

Assets includes furniture and equipment, leasehold improvements, and capitalized start-up costs.

Data communication means transmitting and receiving of data to or from Banks, Federal Reserve offices, clearinghouse associations, depository institutions or their service bureaus, and other direct sending entities; arrangement for delivery of information; and telephone inquiry service.
Data processing includes capture, storage, and assembling of, and computation of, data from payment instruments received from Federal Reserve offices, Banks, clearinghouse associations, depository institutions, and other direct lending entities.

Eligible institution means any institution that is eligible to make application to become a member of a Bank under section 4 of the Bank Act (12 U.S.C. 1424), including any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community development financial institution, or any insured depository institution (as defined in section 2(9) of the Bank Act (12 U.S.C. 1422(9))), regardless of whether the institution applies for or would be approved for membership.

Issuance of forms means the designation and distribution of standardized forms for use in collection, processing, and settlement services.

Presentment means a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder, and may involve the use of electronic transmission of an instrument or item or transmission of data from the instrument or item by electronic or mechanical means.

Statement packaging includes receiving statement information from members or eligible institutions or their service bureaus on respective customer cycle dates; printing statements; matching customer account statements; packaging the statements with appropriate items and informational materials, as authorized by individual members and eligible institutions, for distribution to their customers; sending the packages to the members or eligible institutions or mailing the packages directly to their customers.

Storage services includes filing, storage, and truncation of items.

Transportation of items includes transporting items from Federal Reserve offices, other Banks’ clearinghouse associations, depository institutions, and other direct sending entities to a Bank; forwarding items to financial institutions after sorting; and forwarding cash items or return items to Federal Reserve offices and other sending entities.

Authority and scope.

(a) Pursuant to section 11(e)(2) of the Bank Act (12 U.S.C. 1431(e)(2)), FHFA has promulgated this subpart governing the collection, processing, and settlement, and services incidental thereto, of drafts, checks, and other negotiable and nonnegotiable items and instruments by Banks. Settlement, collection, and processing include the following activities as defined in this subpart: Account processing, data processing, data communication, issuance of forms, transportation of items, and storage services.

(b) Any activity authorized by section 11(e)(2) of the Bank Act (12 U.S.C. 1431(e)(2)) shall be governed by the provisions of this subpart.

General provisions.

The Banks are authorized to:

(a) Engage in, be agents or intermediaries for, or otherwise participate or assist in, the processing, collection, and settlement of checks, drafts, or any other negotiable or nonnegotiable items and instruments drawn on eligible institutions or Bank members; and

(b) Be drawees of checks, drafts, and other negotiable and nonnegotiable items and instruments issued by eligible institutions or Bank members.

Incidental powers.

In connection with the collection, processing, and settlement of items and instruments drawn on or issued by eligible institutions or Bank members, a Bank may also perform the following services:

(a) Statement packaging; and

(b) Any other activity that FHFA shall, from time to time, after notice and comment, find necessary for the exercise of the authority of this subpart.

Operations.

A Bank may utilize the services of a Federal Reserve Bank and may become a member or use the services of a clearinghouse, public or private financial institution, or agency in the exercise of
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any powers or functions under this subpart.

§ 1271.6 Pricing of services.
(a) General. Banks shall charge for services authorized in this subpart in a manner consistent with the principles of section 11A(c) of the Federal Reserve Act (12 U.S.C. 248a(c)), as interpreted by this subpart.
(b) Payment instrument account services. (1) In determining the fees for services provided under this subpart, a Bank must take into account all direct and indirect costs of providing the services.
(2) Prices must reflect the imputed rate of return that would have been earned and the taxes that would have been paid if the Bank were a private corporation, by using a cost of capital adjustment factor applied to those assets used in providing services authorized under this subpart.
(c) Review and publication. For any year during which any Bank actually provides services authorized by this subpart:
(1) FHFA shall from time to time and at least annually review the cost of capital adjustment factor and review prices for services authorized in this subpart for compliance with the principles set forth in paragraphs (a) and (b) of this section, and
(2) FHFA shall annually publish in the Federal Register all prices for Bank services authorized in this subpart except those for fees charged to an applicant for draws made by a beneficiary under a standby letter of credit.

§ 1271.7 Rights, powers, responsibilities, duties, and liabilities.
To the extent it is not inconsistent with other provisions of this subpart, the Uniform Commercial Code governs the rights, powers, responsibilities, duties, and liabilities of Banks in the exercise of their authority under this subpart. For purposes of this paragraph, the term “bank,” as used in the Uniform Commercial Code and clearinghouse rules, includes Banks and their members and eligible institutions.

§ 1271.15 Definitions.
As used in this subpart:
Confidential regulatory information means any record, data, or report, including but not limited to examination reports, or any part thereof, that is non-public, privileged or otherwise not intended for public disclosure which is in the possession or control of a financial regulatory agency and which contains information regarding members of a Bank or financial institutions with which a Bank has had or contemplates having transactions under the Bank Act.
Financial regulatory agency means any of the following:
(1) The Department of the Treasury, including the Comptroller of the Currency;
(2) The Board of Governors of the Federal Reserve System;
(3) The National Credit Union Administration; or
(4) The Federal Deposit Insurance Corporation.
Third party means any person or entity except a director, officer, employee or agent of either:
§ 1271.16 Scope.

This subpart governs the procedure by which a Bank will request and receive confidential regulatory information pursuant to section 22 of the Bank Act (12 U.S.C. 1442).

§ 1271.17 Request for confidential regulatory information.

A Bank shall make all requests for confidential regulatory information to a financial regulatory agency, or to a regional office of such agency if mutually agreeable, in accordance with the procedures contained in this subpart as well as any procedures of general applicability for requesting information promulgated by such financial regulatory agency. This subpart and its procedures may be supplemented by a confidentiality agreement between a Bank and a financial regulatory agency.

§ 1271.18 Form of request.

A request by a Bank to a financial regulatory agency for confidential regulatory information shall be made in writing or by such other means as may be agreed upon between the Bank and the financial regulatory agency. The request shall reference section 22 of the Bank Act (12 U.S.C. 1442), as amended, and this regulation, and shall describe the confidential regulatory information requested and identify its intended use pursuant to the Bank Act. The request shall be signed or otherwise made by any duly authorized Bank officer or employee.

§ 1271.19 Storage of confidential regulatory information.

Each Bank shall:

(a) Store all identified confidential regulatory information in secure storage areas or filing cabinets or other secured facilities generally used by such Bank and limit access thereto in the same manner as it maintains the confidentiality of its own members’ privileged or non-public information;

(b) Have in place a written set of procedures and policies designed to ensure the confidentiality of confidential regulatory information in its possession; and

(c) Establish an internal review of its procedures for storing confidential regulatory information and maintaining its confidentiality, as a part of its internal audit process.

§ 1271.20 Access to confidential regulatory information.

Each Bank shall ensure that access to the confidential regulatory information stored at its facility is limited to those with a need to know such information and that employees with access maintain the confidentiality of the confidential regulatory information in accordance with the Bank’s own procedures for maintaining the confidentiality of its members’ privileged or non-public information.

§ 1271.21 Third party requests for confidential regulatory information.

(a) General. In the event a Bank receives a request for confidential regulatory information in its possession from any third party, the Bank shall forward such request to the financial regulatory agency from which the confidential regulatory information was obtained.

(b) Subpoena. In the event a Bank receives a subpoena for confidential regulatory information issued by a Federal, state or local government department, agency, court or bureau, the Bank shall give timely written notice of such subpoena to the financial regulatory agency from which the confidential regulatory information was obtained, unless such notice is prohibited by applicable law. Except as limited in this subpart, the Bank may disclose confidential regulatory information pursuant to the subpoena, after giving timely written notice, when:

(1) The financial regulatory agency gives written approval to the disclosure; or

(2) A binding order to produce the confidential regulatory information has become final with all rights of appeal either exhausted or lapsed.
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§ 1271.30 Definitions.

As used in this subpart:

1. Administrative expenses—Include general office and operating expenses such as telephone and photocopy charges, printing, legal, and professional fees, postage, courier services, and office supplies; and

2. Non-administrative expenses—Include custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

3. Custodian fees—Include any fee incurred by the Financing Corporation in connection with the transfer of any security to, or maintenance of any security in, the segregated account established under section 21(g)(2) of the Bank Act (12 U.S.C. 1441(g)(2)), and any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

4. Directorate—Means the board established under section 21(b) of the Bank Act (12 U.S.C. 1441(b)) to manage the Financing Corporation.

5. Insured depository institution—Has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

6. Issuance costs—Include issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of Financing Corporation obligations, including legal and accounting expenses, trustee, fiscal, and paying agent charges, securities processing charges, joint collection agent charges, advertising expenses, and costs incurred in connection with preparing and printing offering materials to the extent the Financing Corporation incurs such costs in connection with issuing any obligations.

7. Non-administrative expenses—Means custodian fees, issuance costs, and interest on Financing Corporation obligations.

8. Obligations—Means debentures, bonds, and similar debt securities issued by the Financing Corporation under sections 21(c)(3) and (e) of the Bank Act (12 U.S.C. 1441(c)(3) and (e)).

9. Receivership proceeds—Means the liquidating dividends and payments made on claims received by the Federal Savings and Loan Insurance Corporation Resolution Fund established under section 11A of the Federal Deposit Insurance Act (12 U.S.C. 1821a) from receiverships, that are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund established under

§ 1271.22 Computer data.

Nothing in this subpart shall preclude a Bank from arranging with any financial regulatory agency to transmit or allow access to confidential regulatory information with the consent of such agency by means of an electronic computer system. Any such arrangement shall ensure the security of the computerized data stored in a Bank’s computer and restrict access to such data in order to preserve confidentiality in a manner agreed upon by the Bank and the financial regulatory agency.

Subpart D—Financing Corporation Operations

§ 1271.31 General authority.

Subject to the limitations and interpretations in this subpart and such orders and directions as FHFA may prescribe, the Financing Corporation shall have authority to exercise all powers and authorities granted to it by the Bank Act and by its charter and bylaws regardless of whether the powers and authorities are specifically implemented in regulation.

§ 1271.32 Authority to establish investment policies and procedures.

The Directorate shall have authority to establish investment policies and procedures with respect to Financing Corporation funds provided that the investment policies and procedures are consistent with the requirements of section 21(g) of the Bank Act (12 U.S.C. 1441(g)). The Directorate shall promptly notify FHFA in writing of any changes to the investment policies and procedures.

§ 1271.33 Book-entry procedure for Financing Corporation obligations.

(a) Authority. Any Federal Reserve Bank shall have authority to apply book-entry procedure to Financing Corporation obligations.

(b) Procedure. The book-entry procedure for Financing Corporation obligations shall be governed by the book-entry procedure established for Bank consolidated obligations, codified at part 1270 of this chapter. Wherever the terms “Bank(s),” “consolidated obligation(s)” or “Book-entry consolidated obligation(s)” appear in part 1270, the terms shall be construed also to mean “Financing Corporation,” “Financing Corporation obligation(s),” or “Book-entry Financing Corporation obligation(s),” respectively, if appropriate to accomplish the purposes of this section.

§ 1271.34 Bank and Office of Finance employees.

Without further approval of FHFA, the Financing Corporation shall have authority to utilize the officers, employees, or agents of any Bank or the Office of Finance in such manner as may be necessary to carry out its functions.

§ 1271.35 Budget and expenses.

(a) Directorate approval. The Financing Corporation shall submit annually to the Directorate for approval, a budget of proposed expenditures for the next calendar year that includes administrative and non-administrative expenses.

(b) FHFA approval. The Directorate shall submit annually to FHFA for approval, the budget of the Financing Corporation’s proposed expenditures it approved pursuant to paragraph (a) of this section.

(c) Spending limitation. The Financing Corporation shall not exceed the amount provided for in the annual budget approved by FHFA pursuant to paragraph (b) of this section, or as it may be amended by the Directorate within limits set by FHFA.

(d) Amended budgets. Whenever the Financing Corporation projects or anticipates that it will incur expenditures, other than interest on Financing Corporation obligations, that exceed the amount provided for in the annual budget approved by FHFA or the Directorate pursuant to paragraph (b) or (c) of this section, the Financing Corporation shall submit an amended annual budget to the Directorate for approval, and the Directorate shall submit such amended budget to FHFA for approval.

§ 1271.36 Administrative expenses.

(a) Payment by Banks. The Banks shall pay all administrative expenses of the Financing Corporation approved pursuant to §1271.35.

(b) Amount. The Financing Corporation shall determine the amount of administrative expenses each Bank shall pay in the manner provided by section 21(b)(7)(B) of the Bank Act (12 U.S.C. 1441(b)(7)(B)). The Financing Corporation shall bill each Bank for such amount periodically.

(c) Adjustments. The Financing Corporation shall adjust the amount of administrative expenses the Banks are required to pay in any calendar year pursuant to paragraphs (a) and (b) of this section, by deducting any funds that remain from the amount paid by
§ 1271.37 Non-administrative expenses; assessments.

(a) Interest expenses. The Financing Corporation shall determine anticipated interest expenses on its obligations at least semiannually.

(b) Assessments on insured depository institutions—(1) Authority. To provide sufficient funds to pay the non-administrative expenses of the Financing Corporation approved under §1271.35, the Financing Corporation shall, with the approval of the board of directors of the FDIC, assess against each insured depository institution an assessment in the same manner as assessments are made by the FDIC under section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817).

(2) Assessment rate—(i) Determination. The Financing Corporation at least semiannually shall establish an assessment rate formula, which may include rounding methodology, to determine the rate or rates of the assessment it will assess against insured depository institutions pursuant to section 21(f)(2) of the Bank Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section.

(ii) Notice. The Financing Corporation shall notify the FDIC and the collection agent, if any, of the formula established under paragraph (b)(2)(i) of this section.

(3) Collecting assessments—(i) Collection agent. The Financing Corporation shall have authority to collect assessments made under section 21(f)(2) of the Bank Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section through a collection agent of its choosing.

(ii) Accounts. Each Bank shall permit any insured depository institution whose principal place of business is in its district to establish and maintain at least one demand deposit account to facilitate collection of the assessments made under section 21(f)(2) of the Bank Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section.

(c) Receivership proceeds—(1) Authority. To the extent the amounts collected under paragraph (b) of this section are insufficient to pay the non-administrative expenses of the Financing Corporation approved under §1271.35, the Financing Corporation shall have authority to require the FDIC to transfer receivership proceeds to the Financing Corporation in accordance with section 21(f)(3) of the Bank Act (12 U.S.C. 1441(f)(3)).

(2) Procedure. The Directorate shall request in writing that the FDIC transfer the receivership proceeds to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the non-administrative expenses of the Financing Corporation approved under §1271.35.

§ 1271.38 Reports to FHFA.

The Financing Corporation shall file such reports as FHFA shall direct.

§ 1271.39 Review of books and records.

FHFA shall examine the Financing Corporation at least annually to determine whether the Financing Corporation is performing its functions in accordance with the requirements of section 21 of the Bank Act (12 U.S.C. 1441) and this subpart.

Subpart E—Authority for Bank Assistance of the Resolution Funding Corporation

§ 1271.41 Bank employees.

Upon the request of the Directorate of the Resolution Funding Corporation, established pursuant to section 21B(b) of the Bank Act (12 U.S.C. 1441b(b)), officers, employees, or agents of the Banks are authorized to act for and on behalf of the Resolution Funding Corporation in such manner as may be necessary to carry out the functions of the Resolution Funding Corporation as provided in section 21B(c)(6)(B) of the Bank Act (12 U.S.C. 1441b(c)(6)(B)).

PART 1272—NEW BUSINESS ACTIVITIES (Eff. until 1/18/17)

Sec. 1272.1 Definitions.
1272.2 Limitation on Bank authority to undertake new business activities.
1272.3 New business activity notice requirement.
1272.4 Commencement of new business activities.
1272.5 Notice by the FHFA.
1272.6 FHFA consent.
§ 1272.7 Examinations; requests for additional information.

AUTHORITY: 12 U.S.C. 1431(a), 1432(a), 4511(b), 4513, 4526(a).

SOURCE: 65 FR 44431, July 18, 2000, unless otherwise noted. Redesignated at 75 FR 76622, Dec. 9, 2010.


EFFECTIVE DATE NOTE: At 81 FR 91694, Dec. 19, 2016, part 1271 was revised effective Jan. 18, 2017. The text in effect at 1-18-17 follows the old part.

§ 1272.1 Definitions.

As used in this part:

New business activity means any business activity undertaken, transacted, conducted, or engaged in by a Bank that has not been previously undertaken, transacted, conducted, or engaged in by that Bank, or was previously undertaken, transacted, conducted, or engaged in under materially different terms and conditions, such that it:

(1) Involves the acceptance of collateral enumerated under §1266.7(a)(4) of this chapter;
(2) Involves the acceptance of classes of collateral enumerated under §1266.7(b) of this chapter for the first time;
(3) Entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or
(4) Involves operations not previously undertaken by that Bank.

[65 FR 44431, July 18, 2000, as amended at 78 FR 2328, Jan. 11, 2013]

§ 1272.2 Limitation on Bank authority to undertake new business activities.

No Bank shall undertake any new business activity except in accordance with the procedures set forth in this part.

§ 1272.3 New business activity notice requirement.

At least sixty days prior to undertaking a new business activity, except as provided in §1272.4(b), a Bank shall submit to the FHFA a written notice containing the following information:

(a) General requirements. Except as provided in paragraph (b) of this section, a Bank’s notice of new business activity shall include:
(1) An opinion of counsel citing the statutory, regulatory, or other legal authority for the new business activity;
(2) A good faith estimate of the anticipated dollar volume of the activity over the short- and long-term;
(3) A full description of:
   (i) The purpose and operation of the proposed activity;
   (ii) The market targeted by the activity;
   (iii) The delivery system for the activity; and
   (iv) The effect of the activity on the housing, or relevant community lending, market;
(4) A demonstration of the Bank’s capacity, through staff, or contractors employed by the Bank, sufficiency of experience and expertise, to safely administer and manage the risks associated with the new activity;
(5) An assessment of the risks associated with the activity, including the Bank’s ability to manage these risks and the Bank’s ability to manage the risks associated with increasing volumes of the new activity; and
(6) The criteria that the Bank will use to determine the eligibility of its members or housing associates to participate in the new activity.

(b) New collateral activities. If a proposed new business activity relates to the acceptance of collateral under §1266.7 of this chapter, a Bank’s notice of new business activity shall include:
(1) A description of the classes or amounts of collateral proposed to be accepted by the Bank;
(2) A copy of the Bank’s member products policy, adopted pursuant to §917.4 of this title;
(3) A copy of the Bank’s procedures for determining the value of the collateral in question, established pursuant to §1266.10 of this chapter; and
(4) A demonstration of the Bank’s capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question.

[65 FR 44431, July 18, 2000, as amended at 67 FR 12894, Mar. 20, 2002]
§ 1272.4 Commencement of new business activities.

A Bank may commence a new business activity:
(a) Sixty days after receipt by the FHFA of the notice of new business activity under §1272.3, if the FHFA has not issued to the Bank a notice as described in §1272.5(a)(1) through (4);
(b) In the case of the acceptance of collateral enumerated under §1266.7(a)(4) of this chapter, immediately upon receipt by the FHFA of a notice of new business activity under §1272.3; or
(c) Immediately upon issuance by the FHFA of a letter of approval under §1272.6.

§ 1272.5 Notice by the FHFA.

(a) Issuance. Within sixty days after receipt of a notice of new business activity under §1272.3, the FHFA may issue to a Bank a notice that:
(1) Disapproves the new business activity;
(2) Instructs the Bank not to commence the new business pending further consideration by the FHFA;
(3) Declares an intent to examine the Bank;
(4) Requests additional information including but not limited to the requests listed in §1272.7;
(5) Establishes conditions for the FHFA’s approval of the new business activity, including but not limited to the conditions listed in §1272.7; or
(6) Contains other instructions or information that the FHFA deems appropriate under the circumstances.

(b) Effect. Following receipt of a notice issued pursuant to paragraph (a) of this section, a Bank may not undertake any new business activity that is the subject of the notice until the Bank has received the FHFA’s consent pursuant to §1272.6.

§ 1272.6 FHFA consent.

The FHFA may at any time provide consent for a Bank to undertake a particular new business activity and setting forth the terms and conditions that apply to the activity, with which the Bank shall comply if the Bank undertakes the activity in question.

§ 1272.7 Examinations; requests for additional information.

(a) General. Nothing in this part shall limit in any manner the right of the FHFA to conduct any examination of any Bank.

(b) Requests for additional information and conditions for approval. With respect to a new business activity, nothing in this part shall limit the right of the FHFA at any time to:
(1) Request further information from a Bank concerning a new business activity; and
(2) Require a Bank to comply with certain conditions in order to undertake, or continue to undertake, the new business activity in question, including but not limited to:
(i) Successful completion of pre- or post-implementation safety and soundness examinations;
(ii) Demonstration by the Bank of adequate operational capacity, including the existence of appropriate policies, procedures and controls;
(iii) Demonstration by the Bank of its ability to manage the risks associated with accepting increasing volumes of particular collateral, or holding increasing volumes of particular assets, including the Bank’s capacity reliably to value, discount and market the collateral or assets for liquidation;
(iv) Demonstration by the Bank that the new business activity is consistent with the housing finance and community lending mission of the Banks and the cooperative nature of the Bank System; and
(v) FHFA review of any contracts or agreements between the Bank and its members or housing associates.

Effective Date Note: At 81 FR 91694, Dec. 19, 2016, part 1272 was revised, effective Jan. 18, 2017. For the convenience of the user, the revised text is set forth as follows:

PART 1272—NEW BUSINESS ACTIVITIES (Eff. 1/18/17)
§ 1272.1 Definitions.
As used in this part:

Business Day means any calendar day other than a Saturday, Sunday, or legal public holiday listed in 5 U.S.C. 6103.

NBA Notice Date means the date on which FHFA receives a new business activity notice.

New business activity (NBA) means any business activity undertaken, transacted, conducted, or engaged in by a Bank that entails material risks not previously managed by the Bank. A Bank’s acceptance of a new type of advance collateral does not constitute an NBA.

§ 1272.2 Limitation on Bank authority to undertake new business activities.
No Bank shall undertake an NBA except in accordance with the procedures set forth in this part.

§ 1272.3 New business activity notice requirement.
Prior to undertaking an NBA, a Bank shall submit a written notice of the proposed NBA that provides a thorough, meaningful, complete, and specific description of the activity such that FHFA will be able to make an informed decision regarding the proposed activity. At a minimum, the notice should include the following information:

(a) A written opinion of counsel identifying the specific statutory, regulatory, or other legal authorities under which the NBA is authorized, and, for submissions raising legal questions of first impression, a reasoned analysis explaining how the cited authorities can be construed to authorize the new activity;

(b) A full description of the proposed activity, including, when applicable, infographics and definitions of key terms. In addition, the Bank shall indicate whether the proposed activity represents a modification to a previously approved activity in which the Bank is engaged or is an activity that FHFA has approved for any other Banks, if known to the requesting Bank, and if applicable;

(c) A discussion of why the Bank proposes to engage in the new activity and how the activity supports the housing finance and community investment mission of the Bank;

(d) A discussion of the risks presented by the new activity and how the Bank will manage these risks; and

(e) A good faith estimate of the anticipated dollar volume of the activity, and the income and expenses associated with implementing and operating the new activity, over the initial three years of operation.

§ 1272.4 Review process.
(a) Within 30 business days of the NBA Notice Date, FHFA will take one of the following actions:

(1) Approve the proposed NBA;

(2) Deny the proposed activity; or

(3) Inform the Bank that the activity raises policy, legal, or supervisory issues that require further evaluation.

(b) In the case of any notice that FHFA has determined requires further evaluation, FHFA will approve or deny the notice by no later than the 80th business day following the NBA Notice Date.

(c) For purposes of calculating the review period, no days will be counted between the date that FHFA has requested additional information from the Bank pursuant to § 1272.5 and the date that the Bank responds to all questions communicated.

(d) Notwithstanding anything contained in this part, the Director may extend the 80 business-day review period by an additional 60 business days if the Director determines that additional time is required to consider the notice. In such a case, FHFA will inform the Bank of any such extension before the 80th business day following the NBA Notice Date, and the Bank may not commence the NBA until FHFA has affirmatively approved the notice.

(e) In considering any NBA notice, FHFA will assess whether the proposed activity will be conducted in a safe and sound manner and is consistent with the housing finance, community investment, and liquidity missions of the Banks and the cooperative nature of the Bank System. FHFA may deny an NBA notice or may approve the notice, which approval may be made subject to the Bank’s compliance with any conditions that FHFA determines are appropriate to ensure that the Bank conducts the new activity in a safe and sound manner and in compliance with applicable laws or regulations and the Bank’s mission.

§ 1272.5 Additional information.
FHFA may request additional information from a Bank necessary to issue a determination regarding an NBA. After an initial request for information, FHFA may make subsequent requests for information only to the extent that the information provided by the
Federal Housing Finance Agency

§ 1273.3

Bank does not fully respond to a previous request, the subsequent request seeks information needed to clarify the Bank’s previous response, or the information provided by the Bank raises new legal, policy, or supervisory issues not evident based on the Bank’s NBA notice or responses to previous requests for information. Nothing contained in this paragraph shall limit the Director’s authority to request additional information from a Bank regarding an NBA for which the Director has extended the review period.

§ 1272.6 Examinations.

Nothing in this part shall limit in any manner the right of FHFA to conduct any examination of any Bank relating to its implementation of an NBA, including pre- or post-implementation safety and soundness examinations, or review of contracts or other agreements between the Bank and any other party.

§ 1272.7 Approval of notices.

The Deputy Director for Federal Home Loan Bank Regulation may approve requests from a Bank seeking approval of any NBA notice submitted in accordance with this part. The Director reserves the right to modify, rescind, or supersede any such approval granted by the Deputy Director, with such action being effective only on a prospective basis.

PART 1273—OFFICE OF FINANCE

Sec.
1273.1 Definitions.
1273.2 Authority of the OF.
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1273.8 General duties of the OF board of directors.
1273.9 Audit Committee.

APPENDIX A TO PART 1273—EXCEPTIONS TO THE GENERAL DISCLOSURE STANDARDS

A U T H O R I T Y : 1 2 U . S . C . 1 4 3 1 , 1 4 4 0 , 4 5 1 1 ( b ) , 4 5 1 3 , 4 5 1 4 ( a ) , 4 5 2 6 ( a ) .
S O U R C E : 7 5 F R 2 3 1 6 1 , M a y 3 , 2 0 1 0 , u n l e s s o t h e r w i s e n o t e d .

§ 1273.1 Definitions.

For purposes of this part:
Audit Committee means the OF Independent Directors acting as the committee established in accordance with § 1273.9 of this part.
Chair means the chairperson of the board of directors of the Office of Finance.

Chief Executive Officer or CEO means the chief executive officer of the Office of Finance.

Independent Director means a member of the OF board of directors who meets the qualifications set forth in § 1273.7(a)(2) of this part.


§ 1273.2 Authority of the OF.

(a) General. The OF shall enjoy such incidental powers under section 12(a) of the Bank Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient execution of its duties and functions pursuant to this part, including the authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties.

(b) Agent. The OF, in the performance of its duties, shall have the power to act on behalf of the Banks in issuing consolidated obligations and in paying principal and interest due on the consolidated obligations, or other obligations of the Banks.

(c) Assessments. The OF shall have authority to assess the Banks for the funding of its operations in accordance with § 1273.5 of this part.

§ 1273.3 Functions of the OF.

(a) Joint debt issuance. Subject to part 1270, subparts B and C, of this chapter, and this part, the OF, as agent for the Banks, shall offer, issue, and service (including making timely payments on principal and interest due) consolidated obligations.

(b) Preparation of combined financial reports. The OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System in accordance with the requirements of § 1273.6(b) and appendix A of this part, using consistent accounting policies and procedures as provided in § 1273.9(b) of this part.

(c) Fiscal agent. The OF shall function as the fiscal agent of the Banks.

(d) Financing Corporation and Resolution Funding Corporation. The OF shall perform such duties and responsibilities for FICO as may be required under part 1271, subpart D, of this chapter, or for REFCORP as may be required
§ 1273.4 FHFA oversight.

(a) Oversight and enforcement actions. FHFA shall have such oversight authority over the OF, the OF board of directors, the officers, employees, agents, attorneys, accountants, or other OF staff as set forth in the Bank Act, the Safety and Soundness Act, and FHFA regulations issued thereunder.

(b) Examinations. Pursuant to section 20 of the Bank Act (12 U.S.C. 1440), FHFA shall examine the OF, all funds and accounts that may be established pursuant to this part 1273, and the operations and activities of the OF, as provided for in the Bank Act, the Safety and Soundness Act, or any regulations promulgated pursuant thereto.

(c) Combined financial reports. FHFA shall determine whether a combined Bank System annual or quarterly financial report complies with the standards of this part.

§ 1273.5 Funding of the OF.

(a) Generally. The Banks are responsible for jointly funding all the expenses of the OF, including the costs of indemnifying the members of the OF board of directors, the Chief Executive Officer, and other officers and employees of the OF, as provided for in this part.

(b) Funding policies. (1) At the direction of and pursuant to policies and procedures adopted by the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the OF and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, wire transfer or draft signed by the Chief Executive Officer or other persons designated by the OF board of directors.

(2) Each Bank’s respective pro rata share of the reimbursement described in paragraph (b)(1) of this section shall be based on a reasonable formula approved by the OF board of directors. Such formula shall be subject to the review of FHFA, and the OF board of directors shall make any changes to the formula as may be ordered by FHFA from time to time.

(c) Alternative funding method. With the prior approval of FHFA, the OF board of directors may, by contract with a Bank or Banks, choose to be reimbursed through a fee structure, in lieu of or in addition to assessment, for services provided to the Bank or Banks.

(d) Prompt reimbursement. Each Bank from time to time shall promptly forward funds to the OF in an amount representing its share of the reimbursement described in paragraph (b) of this section when directed to do so by the Chief Executive Officer pursuant to the procedures of the OF board of directors.

(e) Indemnification expenses. All expenses incident to indemnification of the members of the OF board of directors, the Chief Executive Officer, and other officers and employees of the OF shall be treated as an expense of the OF to be reimbursed by the Banks under the provisions of this part.

(1) Operating funds segregated. Any funds received by the OF from the Banks pursuant to this section for operating expenses promptly shall be deposited into one or more accounts and shall not be commingled with any proceeds from the sale of consolidated obligations in any manner.

§ 1273.6 Debt management duties of the OF.

(a) Issuing and servicing of consolidated obligations. The OF, as agent for the Banks, shall issue and service (including making timely payments on principal and interest due, subject to §§ 1270.9 and 1270.10 of this chapter) consolidated obligations pursuant to and in accordance with the policies and procedures established by the OF board of directors under this part.

(b) Combined financial reports requirements. The OF, under the oversight of the Audit Committee, shall prepare and distribute the combined annual and quarterly financial reports for the
Bank System in accordance with the following requirements:

1. The scope, form, and content of the disclosure generally shall be consistent with the requirements of the Securities and Exchange Commission Regulations S-K and S-X (17 CFR parts 229 and 210).

2. Information about each Bank shall be presented as a segment of the Bank System as if generally accepted accounting principles regarding business segment disclosure applied to the combined annual and quarterly financial reports of the Bank System, and shall be presented using consistent accounting policies and procedures as provided in §1273.9(b) of this part.

3. The standards set forth in paragraphs (b)(1) and (b)(2) of this section are subject to the exceptions set forth in Appendix A to this part.

4. The combined Bank System annual financial reports shall be filed with FHFA and distributed to each Bank and Bank member within 90 days after the end of the fiscal year. The combined Bank System quarterly financial reports shall be filed with FHFA and distributed to each Bank and Bank member within 45 days after the end of the first three fiscal quarters of each year.

5. The Audit Committee shall ensure that the combined Bank System annual or quarterly financial reports comply with the standards of this part.

6. The OF and the OF board of directors, including the Audit Committee, shall comply promptly with any directive of FHFA regarding the preparation, filing, amendment, or distribution of the combined Bank System annual or quarterly financial reports.

7. Nothing in this section shall create or be deemed to create any rights in any third party.

(c) Capital markets data. The OF shall provide capital markets information concerning debt to the Banks.

(d) NRSROs. The OF shall manage the relationships with NRSROs in connection with their rating of consolidated obligations.

(e) Research. The OF shall conduct research reasonably related to the issuance or servicing of consolidated obligations.

(f) Monitor Banks’ credit exposure. The OF shall timely monitor, and compile relevant data on, each Bank’s and the Bank System’s unsecured credit exposure to individual counterparties.

§ 1273.7 Structure of the OF board of directors.

(a) Membership. The OF board of directors shall consist of part-time members as follows:

1. Each of the Bank presidents, ex officio, provided that if the presidency of any Bank becomes vacant, the person designated by the Bank’s board of directors to temporarily fulfill the duties of president of that Bank shall serve on the OF board of directors until the presidency is filled permanently; and

2. Five Independent Directors who—

(i) Each shall be a citizen of the United States;

(ii) As a group, shall have substantial experience in financial and accounting matters; and

(iii) Shall not have any material relationship with a Bank, or the OF (directly or as a partner, shareholder, or officer of an organization), as determined under criteria set forth in a policy adopted by the OF board of directors. At a minimum, such policy shall provide that an Independent Director may not:

(A) Be an officer, director, or employee of any Bank or member of a Bank, or have been an officer, director, or employee of a Bank or member of a Bank during the previous three years;

(B) Be an officer or employee of the OF, or have been an officer or employee of the OF during the previous three years; or

(C) Be affiliated with any consolidated obligations selling or dealer group under contract with OF, or hold shares or any other financial interest in any entity that is part of a consolidated obligations seller or dealer group in an amount greater than the lesser of $250,000 or 0.01% of the market capitalization of the seller or dealer group, or in an amount that exceeds $1,000,000 for all entities that are part of any consolidated obligations seller dealer group, combined. For purposes of this
paragraph (a)(2)(iii)(C), a holding company of an entity that is part of a consolidated obligations seller or dealer group shall be deemed to be part of the consolidated obligations selling or dealer group if the assets of the holding company’s subsidiaries that are part of a consolidated obligation seller or dealer group constitute 35% or more of the consolidated assets of the holding company.

(b) Terms. (1) Except as provided in paragraph (b)(2) of this section, each Independent Director shall serve for five-year terms (which shall be staggered so that no more than one Independent Director seat would be scheduled to become vacant in any one year), and shall be subject to removal or suspension in accordance with §1273.4(a). An Independent Director may not serve more than two full, consecutive terms, provided that any partial term served by an Independent Director pursuant to paragraph (b)(2) of this section shall not count as a term for purposes of this restriction.

(2) The OF board of directors shall fill any vacancy among the Independent Directors occurring prior to the scheduled end of a term by majority vote of the OF board of directors from among the Independent Directors then serving on the OF board of directors, and the Vice Chair shall be elected by majority vote of the OF board of directors from among all directors.

(2) The OF board of directors shall promptly inform FHFA of the election of a Chair or Vice Chair. If FHFA objects to any Chair or Vice Chair elected by the OF board of directors, FHFA shall provide written notice of its objection within 20 business days of the date that FHFA first receives the notice of the election of the Chair and or Vice Chair, and the OF board of directors must then promptly elect a new Chair or Vice Chair, as appropriate.

(e) By-laws and Committees. (1) The OF board of directors shall adopt by-laws governing the manner in which the board conducts its affairs, which shall be consistent with the requirements of this part and other applicable laws and regulations as administered by FHFA. The by-laws of the board of directors shall be subject to review and approval by FHFA.

(2) In addition to the Audit Committee required under §1273.9, the OF board of directors may establish other committees, including an Executive Committee. The duties and powers of such committee, including any powers delegated by the OF board of directors, shall be specified in the by-laws of the board of directors or the charter of the committee.
§ 1273.8 General duties of the OF board of directors.

(a) General. Each director shall have the duty to:

(1) Carry out his or her duties as director in good faith, in a manner such director believes to be in the best interests of the OF and the Bank System, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;

(2) Administer the affairs of the OF fairly and impartially and without discrimination in favor of or against any Bank;

(3) At the time of appointment or election, or within a reasonable time thereafter, have a working familiarity with basic finance and accounting practices, including the ability to read and understand the Bank System’s combined balance sheets and income statements and the relevant financial statements of the OF and to ask substantive questions of management and the internal and external auditors with regard to both the combined financial statements of the Bank System and the operations and financial statements of the OF, as appropriate; and

(4) Direct the operations of the OF in conformity with the requirements set forth in the Bank Act, Safety and Soundness Act, and this chapter.

(b) Meetings and quorum. The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its by-laws, and shall hold no fewer than six in-person meetings annually. Due notice shall be given to
FHFA by the Chair prior to each meeting. A quorum, for purposes of meetings of the OF board of directors, shall require a majority of sitting board members, which must include a majority of sitting Independent Directors.

(c) Duties regarding COs. The OF board of directors shall oversee the establishment of policies regarding COs that shall:

(1) Govern the frequency and timing of issuance, issue size, minimum denomination, CO concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, selection of clearing organizations, and the selection and compensation of underwriters for consolidated obligations, which shall be in accordance with the requirements and limitations set forth in paragraph (c)(4) of this section;

(2) Prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each Bank describing a policy permitting such issuances, soliciting comments from each Bank’s board of directors, and considering the comments received before adopting a policy permitting such issuance activities;

(3) Require all broker-dealers or underwriters under contract to the OF to have and maintain adequate suitability sales practices and policies, which shall be acceptable to, and subject to review by, the OF;

(4) Require that COs shall be issued efficiently and at the lowest all-in funding costs over time, consistent with—

(i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks’ role as GSEs;

(ii) Maintaining reliable access to the short-term and long-term capital markets; and

(iii) Positioning the issuance of debt to take advantage of current and future capital market opportunities.

(d) Other duties. The OF board of directors shall:

(1) Set policies for management and operation of the OF;

(2) Approve a strategic business plan for the OF in accordance with the provisions of §1239.31 of this chapter, as appropriate;

(3) Select, employ, determine the compensation for, and assign the duties and functions of a Chief Executive Officer of the OF who shall—

(i) Be head of the OF and direct the implementation of the OF board of directors’ policies;

(ii) Serve as a member of the Directorate of the FICO, pursuant to section 21(b)(1)(A) of the Bank Act (12 U.S.C. 1441(b)(1)(A)); and

(iii) Serve as a member of the Directorate of the REFCORP, pursuant to section 21B(c)(1)(A) of the Bank Act (12 U.S.C. 1441b(c)(1)(A)).

(4) Review and approve all contracts of the OF, except for contracts for which exclusive authority is provided to the Audit Committee by paragraphs (b)(5) and (b)(6) of §1273.9; and

(5) Assume any other responsibilities that may from time to time be assigned to it by FHFA.

(e) No rights created. Nothing in this part shall create or be deemed to create any rights in any third party.


§ 1273.9 Audit Committee.

(a) Composition. The Independent Directors shall serve as the Audit Committee. The Audit Committee shall elect its chairperson from among its members. The Chairperson of the OF may also serve as chairperson of the Audit Committee, if the Audit Committee members so decide.

(b) Responsibilities. (1) The Audit Committee shall be responsible for overseeing the audit function of the OF and the preparation and the accurate and meaningful combination of information submitted by the Banks in the Bank System’s combined financial reports.

(2) For purposes of the combined financial reports, the Audit Committee
shall ensure that the Banks adopt consistent accounting policies and procedures to the extent necessary for information submitted by the Banks to the OF to be combined to create accurate and meaningful combined financial reports.

(3) The Audit Committee, in consultation with FHFA, may establish common accounting policies and procedures for the information submitted by the Banks to the OF for the combined financial reports where the Committee determines such information provided by the several Banks is inconsistent and that consistent policies and procedures regarding that information are necessary to create accurate and meaningful combined financial reports.

(4) To the extent possible the Audit Committee shall operate consistent with the requirements pertaining to audit committee reports set forth in Item 407(d)(3) of Regulation S-K promulgated by the Securities and Exchange Commission.

(5) The Audit Committee shall oversee internal audit activities, including the selection, evaluation, compensation, and, where appropriate, replacement of the internal auditor. The internal auditor shall report directly to the Audit Committee on substantive matters, and is ultimately accountable to the Audit Committee and the board of directors.

(6) The Audit Committee shall have the exclusive authority to employ and contract for the services of an independent, external auditor for the OF's annual and quarterly combined financial statements and of an independent, external auditor for OF.

(7) The Audit Committee shall direct senior management to maintain the reliability and integrity of the accounting policies and financial reporting of the OF.

(8) The Audit Committee shall review the basis for the OF's financial statements and the external auditor's opinion rendered with respect to such financial statements.

(9) The Audit Committee shall ensure that senior management has established and is maintaining an adequate internal control system within the OF by:

(i) Reviewing the OF’s internal control system and the resolution of identified material weaknesses and reportable conditions in the internal control system, including the prevention or detection of management override or compromise of the internal control system; and

(ii) Reviewing the programs and policies of the OF designed to ensure compliance with applicable laws, regulations, and policies and monitoring the results of these compliance efforts.

(10) The Audit Committee shall review the policies and procedures established by senior management to assess and monitor implementation of the OF's strategic business plan and the operating goals and objectives contained therein.

(11) The Audit Committee shall provide an independent, direct channel of communication between the OF's board of directors and the internal and external auditors.

(12) The Audit Committee shall conduct or authorize investigations into any matters within the Audit Committee's scope of responsibilities.

(13) The Audit Committee shall report periodically its findings to the OF's board of directors.

(14) The Audit Committee shall prepare written minutes of each Audit Committee meeting.

(c) Charter. (1) The Audit Committee shall adopt, and the OF board of directors shall approve, a formal written charter, consistent with the duties and authority set forth in this section, that specifies the scope of the Audit Committee's powers and responsibilities. The Audit Committee and the OF board of directors shall:

(i) Review, and assess the adequacy of, and, where appropriate, amend the Audit Committee charter on an annual basis; and

(ii) Re-adopt and re-approve, respectively, the Audit Committee charter not less often than every three years.

(2) The charter of the Audit Committee shall be subject to review and approval by FHFA.

(d) No delegation. The Audit Committee may not delegate the responsibilities assigned to it under this section to any person, or to any other
committee or sub-committee of the OF board of directors.


APPENDIX A TO PART 1273—EXCEPTIONS TO THE GENERAL DISCLOSURE STANDARDS

A. Related-party transactions. Item 404 of Regulation S–K, 17 CFR 229.404, requires the disclosure of certain relationships and related party transactions. In light of the cooperative nature of the Bank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will disclose the percent of advances to members an officer of which serves as a Bank director, and list the top ten holders of advances in the Bank System and the top five holders of advances by Bank, with a further disclosure indicating which of these members had an officer that served as a Bank director. The combined financial report will also disclose the top ten holders of advances in the Bank System by holding company, where the advances of all affiliates within a holding company are aggregated.

B. Biographical information. The biographical information required by Items 401 and 405 of Regulation S–K, 17 CFR 229.401 and 405, will be provided only for members of the OF board of directors, including the Bank presidents, the Chair and Vice-Chair of the board of directors of each Bank, and the Chief Executive Officer of OF.

C. Compensation. The information on compensation required by Item 402 of Regulation S–K, 17 CFR 229.402, will be provided only for Bank presidents and the CEO of the OF.

D. Submission of matters to a vote of stockholders. No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC’s form 10–K, 17 CFR 249.310.

E. Exhibits. The exhibits required by Item 601 of Regulation S–K, 17 CFR 229.601, are not applicable and will not be provided.

F. Per share information. The statement of financial information required by Items 301 and 302 of Rule S–K, 17 CFR 229.301 and 302, is inapplicable because the shares of the Banks are subscription capital that trades at par, and the shares expand or contract with changes in member assets or advance levels.

G. Beneficial ownership. Item 403 of Rule S–K, 17 CFR 229.403, requires the disclosure of security ownership of certain beneficial owners and management. The combined financial report will provide a listing of the ten largest holders of capital stock in the Bank System and a listing of the five largest holders of capital stock by Bank. This listing will also indicate which members had an officer that served as a director of a Bank. The combined financial report will also disclose the top ten holders of Bank stock in the Bank System by holding company, where the Bank stock of all affiliates within a holding company is aggregated.


PART 1274—FINANCIAL STATEMENTS OF THE BANKS

Sec. 1274.1 Definitions.
1274.2 Audit requirements.
1274.3 Requirements to provide financial and other information to FHFA and the OF.

AUTHORITY: 12 U.S.C. 1426, 1431, 4511(b), 4513, 4526(a).

SOURCE: 75 FR 23166, May 3, 2010, unless otherwise noted.

§ 1274.1 Definitions.

For purposes of this part:

Audit means an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Audit report means a document in which an independent accountant indicates the scope the audit made and sets forth an opinion regarding the financial statement taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.


§ 1274.2 Audit requirements.

(a) Each Bank, the OF, and the FICO shall obtain annually an independent external audit of and an audit report on its individual financial statement.

(b) The OF audit committee shall obtain an audit and an audit report on the combined annual financial statements for the Bank System.

(c) All audits must be conducted in accordance with generally accepted auditing standards and in accordance with the most current government auditing standards issued by the Office of
the Comptroller General of the United States.

(d) An independent, external auditor must meet at least twice each year with the audit committee of each Bank, the audit committee of OF, and the FICO Directorate.

(e) FHFA examiners shall have unrestricted access to all auditors’ work papers and to the auditors to address substantive accounting issues that may arise during the course of any audit.

§ 1274.3 Requirements to provide financial and other information to FHFA and the OF.

In order to facilitate the preparation by the OF of combined Bank System annual and quarterly reports, each Bank shall provide to the OF in such form and within such timeframes as FHFA or the OF shall specify, all financial and other information and assistance that the OF shall request for that purpose. Nothing in this section shall contravene or be deemed to circumscribe in any manner the authority of FHFA to obtain any information from any Bank related to the preparation or review of any financial report.

PART 1277—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS, CAPITAL STOCK AND CAPITAL PLANS

Subpart A—Definitions

Sec.

1277.1 Definitions.

Subpart B [Reserved]

Subpart C—Bank Capital Stock

1277.20 Classes of capital stock.
1277.21 Issuance of capital stock.
1277.22 Minimum investment in capital stock.
1277.23 Dividends.
1277.24 Liquidation, merger, or consolidation.
1277.25 Transfer of capital stock.
1277.26 Redemption and repurchase of capital stock.
1277.27 Other restrictions on the repurchase or redemption of Bank stock.

Subpart D—Bank Capital Plans

1277.28 Bank capital plans.

1277.29 Amendments to a Bank’s capital plan.

A U T H O R I T Y : 1 2 U . S . C . 1 4 2 6 , 1 4 3 6 ( a ) , 1 4 4 0 , 1 4 4 3 , 1 4 4 6 , 4 5 1 1 , 4 5 1 3 , 4 5 1 4 , 4 5 2 6 , 4 6 1 2 .

S O U R C E : 8 0 F R 1 2 7 5 6 , M a r . 1 1 , 2 0 1 5 , u n l e s s o t h e r w i s e n o t e d .

Subpart A—Definitions

§ 1277.1 Definitions.

As used in this part:

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by §1277.20(a).

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by §1277.20(b).

Former member means an institution for which the membership in a Bank has been terminated but which continues to hold stock in the Bank as required by the Bank’s capital plan, and includes any successor to such institution that continues to hold the stock in the Bank that had been issued to the acquired institution.

General allowance for losses means an allowance established by the Bank in accordance with GAAP for losses, but which does not include any amounts held against specific assets of the Bank.

Minimum investment means the minimum amount of stock that an institution is required to own in order to be a member of a Bank and in order to obtain advances and to engage in other business activities with the Bank in accordance with §1277.22.

Perpetual capital means the retained earnings of a Bank, determined in accordance with GAAP, plus the amount paid-in for the Bank’s Class B stock.

Redeem or Redemption means the acquisition by a Bank of its outstanding Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively, for the stock.

Regulatory capital requirements means the minimum amounts of permanent and total capital that a Bank is required to maintain under section 6(a) of the Bank Act (12 U.S.C. 1436(a)) and
any related regulations, as such requirements may be modified by the Director, or any similar requirement established for a Bank by regulation, order, written agreement or other action.

*Repurchase* means the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year statutory redemption period for the stock.

*Total capital* of a Bank means the sum of permanent capital, the amounts paid-in for Class A stock, the amount of any general allowance for losses, and the amount of other instruments identified in a Bank’s capital plan that the Director has determined to be available to absorb losses incurred by such Bank.

**Subpart B [Reserved]**

**Subpart C—Bank Capital Stock**

§ 1277.20 Classes of capital stock.

The authorized capital stock of a Bank shall consist of the following instruments:

(a) Class A stock, which shall:

1. Have a par value as determined by the board of directors of the Bank and stated in the Bank’s capital plan;
2. Be issued, redeemed, and repurchased only at its stated par value; and
3. Be redeemable in cash only on six-months written notice to the Bank.

(b) Class B stock, which shall:

1. Have a par value as determined by the board of directors of the Bank and stated in the Bank’s capital plan;
2. Be issued, redeemed, and repurchased only at its stated par value;
3. Be redeemable in cash only on five-years written notice to the Bank; and
4. Confer an ownership interest in the retained earnings, surplus, undivided profits, and equity reserves of the Bank.

(c) Any one or more subclasses of Class A or Class B stock, each of which may have different rights, terms, conditions, or preferences as may be authorized in the Bank’s capital plan, provided, however, that each subclass of stock shall have all of the characteristics of its respective class, as specified in paragraph (a) or (b) of this section.

§ 1277.21 Issuance of capital stock.

A Bank may issue either one or both classes of its capital stock (including subclasses), as authorized by §1277.20, and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members, or to former members to the extent those institutions are required to maintain a minimum stock investment for existing activities under the capital plan, and only in book-entry form. The Bank shall act as its own transfer agent. All capital stock shall be issued in accordance with the Bank’s capital plan.

§ 1277.22 Minimum investment in capital stock.

(a) A Bank shall require each member to maintain a minimum investment in the capital stock of the Bank, both as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with the Bank or obtaining advances and other services from the Bank. The amount of the required minimum investment shall be determined in accordance with the Bank’s capital plan and shall be sufficient to ensure that the Bank remains in compliance with its regulatory capital requirements. A Bank shall require each member to maintain its minimum investment for as long as the institution remains a member of the Bank and shall require each member and former member to maintain its minimum investment for as long as the institution engages in any activity with the Bank for which the capital plan requires the institution to maintain capital stock.

(b) A Bank may establish the minimum investment as a percentage of the total assets of an institution, as a percentage of the advances outstanding to that institution, as a percentage of any other business activity conducted with the institution, on any other basis that is approved by the Director, or any combination thereof.

(c) A Bank may require that the minimum investment requirement be satisfied through the purchase of either Class A or Class B stock, or through
the purchase of one or more combinations of Class A and Class B stock that have been authorized by the board of directors of the Bank in its capital plan. A Bank, in its discretion, may establish a lower minimum investment to the extent the requirement is met through investment in Class B stock than if the requirement is met through investment in Class A stock, provided that such reduced investment provides sufficient capital for the Bank to remain in compliance with its regulatory capital requirements.

(d) Each member, or if applicable, former member, of a Bank shall at all times maintain an investment in the capital stock of the Bank in an amount that is sufficient to satisfy the minimum investment required under the Bank's capital plan.

§ 1277.23 Dividends.

(a) In general. A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. The capital plan may establish different dividend rates or preferences for each class or subclass of stock, which may include a dividend that tracks the economic performance of certain Bank assets, such as Acquired Member Assets. A member, including a member that has provided the Bank with a notice of intent to withdraw from membership, or a former member shall be entitled to receive any dividends that a Bank declares on its capital stock while such institution owns the stock.

(b) Limitation on payment of dividends. In no event shall a Bank declare or pay any dividend on its capital stock if after doing so the Bank would fail to meet any of its regulatory capital requirements, nor shall a Bank that is not in compliance with any of its regulatory capital requirements declare or pay any dividend on its capital stock.

§ 1277.24 Liquidation, merger, or consolidation.

The respective rights of the Class A and Class B stockholders, in the event that the Bank is liquidated, merged, or otherwise consolidated with another Bank, shall be determined in accordance with the capital plan of the Bank, provided, however, that nothing in the capital plan shall be construed to limit any rights or authority granted FHFA under the Bank Act or the Safety and Soundness Act to issue any regulation or order or to take any other action that may affect or otherwise alter the rights or privileges of stockholders in a liquidation, merger, or consolidation of a Bank.

§ 1277.25 Transfer of capital stock.

A Bank in its capital plan may allow a member or former member to transfer any excess stock to a member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. Any such stock transfers shall be at par value and shall be effective upon being recorded on the appropriate books and records of the Bank. The Bank may, in its capital plan, require that the transfer be approved by the Bank before such transfer can occur.

§ 1277.26 Redemption and repurchase of capital stock.

(a) Redemption. (1) A member or former member may have its stock in a Bank redeemed by providing written notice to the Bank in accordance with this section. A member or former member shall provide six-months written notice for Class A stock and five-years written notice for Class B stock. The notice shall indicate the number of shares of Bank stock that are to be redeemed. No more than one notice of redemption may be outstanding at one time for the same shares of Bank stock. At the expiration of the applicable notice period, the Bank shall pay to the member or other institution holding the stock the stated par value of that stock in cash.

(2) A member may cancel a notice of redemption by so informing the Bank in writing, and the Bank may impose a fee (to be specified in its capital plan) with respect to any cancellation of a pending notice of redemption. A request by a member (whose membership
has not been terminated) to redeem specific shares of stock shall automatically be cancelled if the Bank is prevented from redeeming the member's stock by paragraph (c) of this section within five business days from the end of the expiration of the applicable redemption notice period because the member would fail to maintain its minimum investment in the stock of the Bank after such redemption. The automatic cancellation of a member's redemption request shall have the same effect as if the member had cancelled its notice to redeem stock prior to the end of the redemption notice period, and a Bank may impose a fee (to be specified in its capital plan) for automatic cancellation of a redemption request.

(3) A Bank shall not be obligated to redeem its capital stock other than in accordance with this paragraph.

(b) Repurchase. A Bank, in its discretion and without regard to the applicable redemption periods, may repurchase excess stock in accordance with the capital plan of that Bank. A Bank undertaking such a stock repurchase at its own initiative shall provide reasonable notice prior to repurchasing any excess stock, with the period of such notice to be specified in the Bank's capital plan, and shall pay the stated par value of that stock in cash. A member's submission of a notice of intent to withdraw from membership, or its termination of membership in any other manner, shall not, in and of itself, cause any Bank stock to be deemed excess stock for purposes of this section.

(c) Limitation. In no event may a Bank redeem or repurchase any stock if, following the redemption or repurchase, the Bank would fail to meet its regulatory capital requirements, or if the member or former member would fail to maintain its minimum investment in the stock of the Bank, as required by §1277.22.

§1277.27 Other restrictions on the repurchase or redemption of Bank stock.

(a) Capital impairment. A Bank may not redeem or repurchase any capital stock without the prior written approval of the Director if the Director or the board of directors of the Bank has determined that the Bank has incurred or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. This prohibition shall apply even if a Bank is currently in compliance with its regulatory capital requirements, and shall remain in effect for however long the Bank continues to incur such charges or until the Director determines that such charges are not expected to continue.

(b) Bank discretion to suspend redemption. A Bank, upon the approval of its board of directors, or of a subcommittee thereof, may suspend redemption of stock if the Bank reasonably believes that continued redemption of stock would cause the Bank to fail to meet its regulatory capital requirements, would prevent the Bank from maintaining adequate capital against a potential risk that may not be adequately reflected in its regulatory capital requirements, or would otherwise prevent the Bank from operating in a safe and sound manner. A Bank shall notify the Director in writing within two business days of the date of the decision to suspend the redemption of stock, providing the reasons for the suspension and the Bank's strategies and time frames for addressing the conditions that led to the suspension. The Director may require the Bank to re-institute the redemption of stock. A Bank shall not repurchase any stock without the written permission of the Director during any period in which the Bank has suspended redemption of stock under this paragraph.

Subpart D—Bank Capital Plans

§1277.28 Bank capital plans.

Each Bank shall have in place a capital plan approved by the Bank's board of directors and the Director. The capital plan shall include, at a minimum, provisions addressing the following matters:

(a) Minimum investment. (1) The capital plan shall require each member, and if applicable each former member, to purchase and maintain a minimum investment in the capital stock of the
§ 1277.28

Bank and prescribe the manner for calculating the minimum investment, in accordance with §1277.22.

(2) The capital plan shall specify the amount and class (or classes) of Bank stock that an institution is required to own in order to become and remain a member of the Bank, and to obtain advances from, or to engage in other business transactions with, the Bank. If a Bank requires that the minimum investment be satisfied through the purchase of one or more combinations of Class A and Class B stock, the authorized combinations of stock shall be specified in the capital plan, which shall afford the option of satisfying the minimum investment through the purchase of any such combination of stock.

(3) The capital plan shall require the board of directors of the Bank to monitor and, as necessary, to adjust, the minimum investment to ensure that outstanding stock remains sufficient for the Bank to comply with its regulatory capital requirements. The plan shall require each member or, where required by the plan, former member, to comply promptly with any adjusted minimum investment established by the board of directors of the Bank, but may allow a reasonable time to do so and may allow a reduction in outstanding business with the Bank as an alternative to purchasing additional stock.

(b) Classes of capital stock. The capital plan shall specify the class or classes of stock (including subclasses, if any) that the Bank will issue, and shall establish the par value, rights, terms, and preferences associated with each class (or subclass) of stock. A Bank may establish preferences relating to, but not limited to, the dividend, voting, or liquidation rights for each class or subclass of Bank stock. Any voting preferences established by the Bank pursuant to §1261.6 of this chapter shall expressly state the voting rights of each class of stock with regard to the election of Bank directors. The capital plan shall provide that the owners of the Class B stock own the retained earnings, surplus, undivided profits, and equity reserves of the Bank, but shall have no right to receive any portion of those items, except through declaration of a dividend or capital distribution approved by the board of directors or through the liquidation of the Bank.

(c) Dividends. The capital plan shall establish the manner in which the Bank will pay dividends, if any, on each class or subclass of stock, and shall provide that the Bank may not declare or pay any dividends if it is not in compliance with any regulatory capital requirement or if after paying the dividend it would not be in compliance with any regulatory capital requirement.

(d) Stock transactions. The capital plan shall establish the criteria for the issuance, redemption, repurchase, transfer, and retirement of stock issued by the Bank. The capital plan also:

(1) Shall provide that the Bank may not issue stock other than in accordance with §1277.31;

(2) Shall provide that the stock of the Bank may be issued only to and held only by the members of that Bank, and by former members to the extent necessary to meet requirements set forth in a capital plan;

(3) Shall specify whether the stock of the Bank may be transferred, as allowed under §1277.25, and, if such transfer is allowed, shall specify the procedures to effect such transfer, and provide that the transfer shall be undertaken only in accordance with §1277.25;

(4) Shall specify that the stock of the Bank may be traded only among the Bank and its members, and former members;

(5) May provide for a minimum investment based on investment in Class B stock that is lower than a minimum investment based on investment in Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements;

(6) Shall specify the fee, if any, to be imposed upon cancellation of a request to redeem Bank stock or upon cancellation of a request to withdraw from membership; and

(7) Shall specify the period of notice that the Bank will provide before the Bank, on its own initiative, determines to repurchase any excess Bank stock.
§ 1277.29 Amendments to a Bank's capital plan.

(a) In general. A Bank’s board of directors shall approve any amendments to the Bank’s capital plan and submit such amendment to the Director for approval. No such amendment may take effect until it has been approved by the Director.

(b) Submission of amendments for approval. Any request for approval of capital plan amendments should be submitted to the Deputy Director for the Division of Federal Home Loan Bank Regulation and should include the following:

(1) The name of the Bank making the request and the name, title, and contact information of the official filing the request;

(2) The name, title and contact information of the staff member(s) whom FHFA may contact for additional information;

(3) A certification by an executive officer of the Bank with knowledge of the facts that the representations made in the request are accurate and complete. The following form of certification may be used: “I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title]”;

(4) A written, narrative description of the proposed amendments to the Bank’s capital plan and a discussion of the Bank’s reasons for the proposed changes;

(5) The amended capital plan as approved by the Bank’s board of directors;

(6) A version of the Bank’s capital plan showing all proposed changes to its previously approved capital plan;

(7) Resolutions of the Bank’s board of directors:

(i) Approving the proposed capital plan amendments; and

(ii) Authorizing the filing of the application for approval of the amendments and concurring in substance with the supporting documentation provided;

(8) An opinion of counsel demonstrating that the proposed amendments comply with the Bank Act, FHFA regulations and any other applicable law or regulation. If the amendments would be identical in substance to provisions approved for other Banks’ capital plans, a Bank’s legal analysis may reference the other capital plans that contain the provisions in question;

(9) An analysis of the effect of the proposed amendments, if any, on the Bank’s capital levels and the Bank’s ability to meet its regulatory capital requirements;

(10) Pro forma financial statements from the end of the quarter immediately prior to the date of submission of the request for approval through at least the end of the next two years, showing the impact of the proposed changes, if any, on capital levels; and

(11) A discussion of and an explanation for changes to the Bank’s strategic plan, if any, which may be related to the capital plan amendments.

(c) FHFA consideration of the amendment. The Director may approve any amendment to a Bank’s capital plan as submitted or may condition approval on the Bank’s compliance with certain stated conditions.

PART 1278—VOLUNTARY MERGERS OF FEDERAL HOME LOAN BANKS

Sec.
1278.1 Definitions.
1278.2 Authority.
1278.3 Merger agreement.
1278.4 Merger application.
1278.5 Approval by Director.
1278.6 Ratification by Bank members.
1278.7 Consummation of the merger.

AUTHORITY: 12 U.S.C. 1432(a), 1446, 4511.

SOURCE: 76 FR 72833, Nov. 28, 2011, unless otherwise noted.

§ 1278.1 Definitions.

Constituent Bank means a Bank that is proposing to merge with one or more
other Banks. Each Bank entering into a merger is a Constituent Bank, regardless of whether it is also a Continuing Bank.

Continuing Bank means a Bank that will exist as the result of a merger of two or more Constituent Banks, and when used in the singular shall include the plural.

Disclosure Statement means a written document that contains, to the extent applicable, all of the items that a Bank would be required to include in a Form S-4 Registration Statement under the Securities Act of 1933 (or any successor form promulgated by the United States Securities and Exchange Commission governing disclosure required for securities issued in business combination transactions) when prepared as a prospectus as directed in Part I of the form, if the Bank were required to provide such a prospectus to its shareholders in connection with a merger.

Effective Date means the date on which the organization certificate of the Continuing Bank becomes effective as provided under §1278.7.

Financial Statements means statements of condition, income, capital, and cash flows, with explanatory notes, in such form as the Banks are required to include in their filings made under the Securities and Exchange Act of 1934.

Merge or Merger means:
(1) A merger of one or more Banks into another Bank;
(2) A consolidation of two or more Banks resulting in a new Bank;
(3) A purchase of substantially all of the assets, and assumption of substantially all of the liabilities, of one or more Banks by another Bank or Banks; or
(4) Any other business combination of two or more Banks into one or more resulting Banks.

Record Date means the date established by a Bank’s board of directors for determining the members that are entitled to vote on the ratification of the merger agreement and the number of ballots that may be cast by each in the election.

§1278.2 Authority.
Any two or more Banks may merge voluntarily under authority of section 26(b) of the Bank Act, provided that each of the following requirements has been satisfied:
(a) The Constituent Banks have executed a written merger agreement that satisfies all requirements of §1278.3;
(b) The Constituent Banks have jointly filed a merger application with FHFA that satisfies all requirements of §1278.4;
(c) The Director has approved the merger application in accordance with the requirements of §1278.5;
(d) The members of each Constituent Bank have ratified the merger agreement as provided under §1278.6; and
(e) The Director has determined that the Constituent Banks have satisfied all conditions imposed in connection with the approval of the merger application, and has accepted the properly executed organization certificate of the Continuing Bank, as provided under §1278.7.

§1278.3 Merger agreement.
A merger of Banks under the authority of §1278.2 shall require a written merger agreement that:
(a) Has been authorized by the affirmative vote of a majority of a quorum of the board of directors of each Constituent Bank at a meeting on the record and has been executed by authorized signing officers of each Constituent Bank; and
(b) Sets forth all material terms and conditions of the merger, including, without limitation, provisions addressing each of the following matters—
(1) The proposed Effective Date and the proposed acquisition date for purposes of accounting for the transaction under GAAP, if that date is to be different from the Effective Date;
(2) The proposed organization certificate and bylaws of the Continuing Bank;
(3) The proposed capital structure plan for the Continuing Bank;
(4) The proposed size and structure of the board of directors for the Continuing Bank;
(5) The formula to be used to exchange the stock of the Constituent Banks for the stock of the Continuing

Bank, and a provision prohibiting the issuance of fractional shares of stock;

(6) Any conditions that must be satisfied prior to the Effective Date, which must include approval by the Director and ratification by the members of the Constituent Banks;

(7) A statement of the representations or warranties, if any, made or to be made by any Constituent Bank;

(8) A description of the legal or accounting opinions or rulings, if any, that are required to be obtained or furnished by any party in connection with the proposed merger; and

(9) A statement that the board of directors of a Constituent Bank may terminate the merger agreement before the Effective Date upon a determination that:

(i) The information disclosed to members contained material errors or omissions;

(ii) Material misrepresentations were made to members regarding the impact of the merger;

(iii) Fraudulent activities were used to obtain members’ approval; or

(iv) An event occurred subsequent to the members’ vote that would have a significant adverse impact on the future viability of the Continuing Bank.

§ 1278.4 Merger application.

(a) Contents of application. Any two or more Banks that wish to merge shall submit to FHFA a merger application that addresses all material aspects of the proposed merger. As provided in §1202.8 of this chapter, a Bank may submit separately any portions of the application that it believes contain confidential or privileged trade secrets or commercial or financial information, which portions will be handled in accordance with FHFA’s Freedom of Information Act regulations set forth in part 1202 of this chapter. The application shall include, at a minimum, the following:

(1) A written statement that includes—

(i) A summary of the material features of the proposed merger;

(ii) The reasons for the proposed merger;

(iii) The effect of the proposed merger on the Constituent Banks and their members;

(iv) The proposed Effective Date, the proposed acquisition date for purposes of accounting for the transaction under GAAP, if that date is to be different from the Effective Date (including the reasons for designating a different acquisition date), and the Record Date established by each Constituent Bank’s board of directors;

(v) If the Constituent Banks contemplate that the proposed merger will be one of two or more related transactions, a summary of the material features of any related transactions and the bearing that the consummation of, or failure to consummate, the related transactions is expected to have upon the proposed merger;

(vi) If not addressed by the merger agreement, the Banks’ proposal for the ultimate size and composition of the board of directors for the Continuing Bank and their plan for reducing the board to its ultimate size and composition, as well as the names of the persons proposed to serve as directors and senior executive officers of the Continuing Bank immediately after the merger;

(vii) A description of all proposed material operational changes including, but not limited to, reductions in the existing staffs of the Constituent Banks (to the extent such information is known), whether and how Bank operations will be combined, and whether any Constituent Bank will continue to operate as a branch of the Continuing Bank;

(viii) Information demonstrating that the Continuing Bank will comply with all applicable capital requirements after the Effective Date;

(ix) A statement explaining all officer and director indemnification provisions; and

(x) An undertaking that the Constituent Banks will continue to disclose all material information, and update all items of the application, as appropriate;

(2) A copy of the executed merger agreement and a certified copy of the resolution of the board of directors of each Constituent Bank authorizing the merger agreement;

(3) A copy of the proposed organization certificate of the Continuing Bank;
(4) A copy of the proposed bylaws of the Continuing Bank;
(5) A copy of the proposed capital structure plan of the Continuing Bank;
(6) The most recent annual audited Financial Statements, and any interim quarterly financial statements for the year-to-date, for each Constituent Bank; and
(7) Pro forma Financial Statements for the Continuing Bank as of the date of the most recent statement of condition supplied under paragraph (a)(6) of this section, and forecasted pro forma Financial Statements for each of at least two years following such date.

(b) Additional information. FHFA may require the Constituent Banks to submit any additional information FHFA deems necessary to evaluate the proposed merger. If FHFA has determined a merger application to be complete as provided in paragraph (c) of this section, FHFA may require the Constituent Banks to submit additional information only with respect to matters derived from or prompted by the materials already submitted, or matters of a material nature that were not reasonably apparent previously, including matters concealed by the Constituent Banks or relating to developments that arose after the determination of completeness. If the Constituent Banks fail to provide the additional information in a timely manner, the Director may deem the failure to provide the required information as grounds to deny the application.

(c) Completion of application. Within 30 days of the receipt of a merger application, FHFA shall determine whether the application is complete and whether FHFA has all information necessary for the Director to evaluate the proposed merger.

1. If FHFA determines that the application is complete and that it has all information necessary to evaluate the proposed merger, it shall so inform the Constituent Banks in writing.

2. If FHFA determines that the application is incomplete, or that it requires additional information in order to evaluate the application, it shall so inform the Constituent Banks in writing, and shall specify the number of days within which the Constituent Banks must provide any additional information or materials. Within 15 days of receipt of the additional information or materials, FHFA shall inform the Constituent Banks in writing whether the merger application is complete.

§ 1278.5 Approval by Director.

(a) Standards. In determining whether to approve a merger of Banks under the authority of §1278.2, the Director shall take into consideration the financial and managerial resources of the Constituent Banks, the future prospects of the Continuing Bank, and the effect of the proposed merger on the safety and soundness of the Continuing Bank and the Bank system.

(b) Determination by Director. After FHFA determines that a merger application is complete, as provided in §1278.4(c), the Director shall, within 30 days, either approve or deny the merger application. An approval of a merger application may include any conditions the Director determines to be appropriate, and shall in all cases be conditioned on each Constituent Bank demonstrating that it has obtained its members’ ratification of the merger agreement in accordance with the requirements of §1278.6 by submitting to FHFA:

1. A certified copy of the members’ resolution ratifying the merger agreement, on which the members cast their votes; and

2. A certification of the member vote from the Bank’s corporate secretary or from an independent third party.

(c) Notice. If the Director approves the merger application, FHFA shall provide written notice of the approval and any conditions to each Constituent Bank, as well as to each other Bank and the Office of Finance. If the Director denies the merger application, FHFA shall provide written notice of the denial to each Constituent Bank, as well as to each other Bank and the Office of Finance, and the notice to the Constituent Banks shall include a statement of the reasons for the denial.

§ 1278.6 Ratification by Bank Members.

(a) Requirements for member vote. No merger of Banks under the authority of §1278.2 may be consummated unless a
merger agreement meeting the requirements of §1278.3 has been ratified by the affirmative vote of the members of each Constituent Bank in a voting process that meets the following requirements:

(1) Notice of vote. Each Constituent Bank shall submit the authorized merger agreement to its members for ratification by delivering to each institution that was a member as of the Record Date—

(i) A ballot that permits the member to vote for or against the ratification of the merger agreement, or to abstain from such vote; and

(ii) A Disclosure Statement that establishes a closing date for the Bank’s receipt of completed ballots that is no earlier than 30 days after the date that the ballot and Disclosure Statement are delivered to its members.

(2) Voting rights and requirements. In the vote to ratify the merger agreement, each member of each Constituent Bank shall be entitled to cast one vote for each share of Bank stock that the member was required to own as of the Record Date, provided that the number of votes that any member may cast shall not exceed the average number of shares of Bank stock required to be held by all members of that Bank, calculated on a district-wide basis, as of the Record Date. A member must cast all of its votes either for or against the ratification of the merger agreement, or may abstain with respect to all of its votes. Each member’s vote shall be made by resolution of its governing body, either authorizing the specific vote, or delegating to an individual the authority to vote.

(3) Determination of result. No Constituent Bank shall review any ballot until after the closing date established in the Disclosure Statement or include in the tabulation any ballot received after the closing date. A Constituent Bank shall tabulate the votes cast immediately after the closing date. The members of a Constituent Bank shall be considered to have ratified a merger agreement if a majority of votes cast in the election have been cast in favor of the ratification of the merger agreement. The Constituent Bank, or the Continuing Bank, as appropriate, shall retain all ballots received for at least two years after the date of the election, and shall not disclose how any member voted.

(4) Notice of result. Within 10 days of the closing date, a Constituent Bank shall deliver to its members, to each Constituent Bank with which it proposes to merge, and to FHFA a statement of—

(i) The total number of eligible votes;

(ii) The number of members voting in the election; and

(iii) The total number of votes cast both for and against ratification of the merger agreement, as well as those that were eligible to be cast by members that abstained and by members who failed to return completed ballots.

(b) False and misleading statements. In connection with a proposed merger, no Bank, nor any director, officer, or employee thereof, shall make any statement, written or oral, which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statement not false or misleading, or necessary to correct any earlier statement that has become false or misleading.

§ 1278.7 Consummation of the merger.

(a) Post-approval submissions. After the members of each Constituent Bank have voted to ratify the merger agreement, the Constituent Banks shall submit to FHFA:

(1) Evidence acceptable to the Director that all conditions imposed in connection with the approval of the merger application under §1278.5 have been satisfied, including the items specified in §§1278.5(b)(1) and (2); and

(2) An organization certificate for the Continuing Bank, in such form as FHFA may specify, that has been executed by the individuals who will constitute the board of directors of the Continuing Bank.

(b) Acceptance of organization certificate. Upon determining that all conditions have been satisfied and that the organization certificate meets the requirements of §1278.7(a)(2), the Director
shall accept the organization certificate of the Continuing Bank by endorsing thereon the date of acceptance and the Effective Date, which date shall be:

(1) The proposed Effective Date set forth in the merger agreement or, if the merger agreement expresses the proposed Effective Date in terms of a range of dates, a date within the applicable range of dates; or

(2) If the proposed Effective Date set forth in the merger agreement has passed, the earlier of:

(i) The 10th business day following the date of acceptance of the organization certificate by the Director; or

(ii) The last business day preceding any date specified in the merger agreement by which the merger agreement will terminate if the merger has not become effective.

(c) Effectiveness of merger. After the Director has accepted the organization certificate of the Continuing Bank as specified on such organization certificate:

(1) The Continuing Bank shall become or remain a body corporate (depending on the type of transaction) operating under such organization certificate with all powers granted to a Bank under the Bank Act;

(2) The Continuing Bank shall succeed to all rights, titles, powers, privileges, books, records, assets, and liabilities of the Constituent Banks, as provided in the merger agreement; and

(3) The corporate existence of any Constituent Bank that is not a Continuing Bank shall cease, unless otherwise provided in the merger agreement.

(d) Notice. After accepting the organization certificate for the Continuing Bank, the Director shall provide to the Constituent Banks, and to each other Bank and the Office of Finance, prompt written notice of that fact, which shall include the date of acceptance and the Effective Date of the organization certificate.
SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS

Subpart A—General

Sec. 1281.1 Definitions.

Subpart B—Housing Goals

1281.10 General.
1281.11 Bank housing goals.
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Subpart C—Reporting Requirements

1281.20 General.
1281.21 Mortgage Reports.
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1281.23 Bank data integrity.


SOURCE: 75 FR 81105, Dec. 27, 2010, unless otherwise noted.

Subpart A—General

§ 1281.1 Definitions.

As used in this part:

Acquired Member Assets (AMA) program means a program that authorizes a Bank to hold assets acquired from or through Bank members or housing associates by means of either a purchase or a funding transaction, subject to the requirements of 12 CFR parts 955 and 980, or successor regulations.

AMA-approved mortgage means a mortgage that meets the requirements of the AMA program at 12 CFR part 955, and is approved to be implemented under 12 CFR part 980, or successor regulations.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment (balloon payment) that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specific period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Borrower income means the total gross income relied on in making the credit decision.

Conforming mortgage means, with respect to a Bank, a conventional AMA-approved single-family mortgage having an original principal obligation that does not exceed the dollar limitation in effect at the time of such origination and applicable to such mortgage under 12 CFR 955.2(a)(1)(i) and 12 U.S.C. 1717(b)(2), as these sections may be amended.

Conventional mortgage means a mortgage other than a mortgage as to which a Bank has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

Designated disaster area means any census tract that is located in a county designated by the federal government as adversely affected by a declared major disaster administered by FEMA, where individual assistance payments were authorized by FEMA. A census tract shall be treated as a “designated disaster area” for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation. This time period may be adjusted for a particular disaster area by notice from FHFA to the Banks.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

Families in low-income areas means:

(1) Any family that resides in a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income;
(2) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(3) Any family with an income that does not exceed area median income that resides in a designated disaster area.

Family means one or more individuals who occupy the same dwelling unit.

FEMA means the Federal Emergency Management Agency.


HOEPA mortgage means a mortgage covered by section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)), as amended by the Home Ownership Equity Protection Act (HOEPA), as implemented by the Board of Governors of the Federal Reserve System.

HUD means the United States Department of Housing and Urban Development.

Low-income means income not in excess of 80 percent of area median income.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Banks annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Metropolitan area means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment;

(2) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(3) Black or African American—a person having origins in any of the black racial groups of Africa;

(4) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(5) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority census tract means a census tract that has a minority population of at least 30 percent and a median income of less than 100 percent of the area median income.

Moderate-income means income not in excess of area median income.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. “Mortgage” includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Bank or Banks under this part and/or the Data Reporting Manual.

Mortgage purchase means a transaction in which a Bank bought or otherwise acquired a mortgage.

Mortgage with unacceptable terms or conditions means a single-family mortgage, including a reverse mortgage, or a group or category of such mortgages, with one or more of the following terms or conditions:

(1) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of $1,000, or an alternative
amount requested by a Bank and determined by the Director as appropriate for small mortgages;
(i) For purposes of this definition, points and fees include:
(A) Origination fees;
(B) Underwriting fees;
(C) Broker fees;
(D) Finder’s fees; and
(E) Charges that the member imposes as a condition of making the loan, whether they are paid to the member or a third party;
(ii) For purposes of this definition, points and fees do not include:
(A) Bona fide discount points;
(B) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys’ fees, notary’s fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;
(C) The cost of mortgage insurance or credit-risk price adjustments;
(D) The costs of title, hazard, and flood insurance policies;
(E) State and local transfer taxes or fees;
(F) Escrow deposits for the future payment of taxes and insurance premiums; and
(G) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount;
(2) An annual percentage rate that exceeds by more than 8 percentage points the yield on Treasury securities with comparable maturities as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit was received;
(3) Prepayment penalties, except where:
(i) The mortgage provides some benefit to the borrower in exchange for the prepayment penalty (e.g., a rate or fee reduction for accepting the prepayment premium);
(ii) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;
(iii) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and
(iv) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower’s default in making his or her mortgage payments;
(4) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;
(5) Underwriting practices contrary to the Interagency Guidance on Non-Traditional Mortgage Product Risks (71 FR 58609) (Oct. 4, 2006), the Interagency Statement on Subprime Mortgage Lending (72 FR 37569) (July 10, 2007), or similar guidance subsequently issued by federal banking agencies;
(6) Failure to comply with fair lending requirements; or
(7) Other terms or conditions that are determined by the Director to be an unacceptable term or condition of a mortgage.
Non-metropolitan area means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area for which median family income estimates are published annually by HUD.
Owner-occupied housing means single-family housing in which a mortgagor resides, including two- to four-unit owner-occupied properties where one or more units are used for rental purposes.
Purchase money mortgage means a mortgage given to secure a loan used for the purchase of a single-family residential property.
Refinancing mortgage means a mortgage undertaken by a borrower that satisfies or replaces an existing mortgage of such borrower. The term does not include:
(1) A renewal of a single payment obligation with no change in the original terms;
(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;
(3) An agreement involving a court proceeding;
(4) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a
result of the mortgagor’s default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;
(5) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage; or
(6) A conversion of a balloon mortgage note on a single-family property to a fully amortizing mortgage note where the Bank already owns or has an interest in the balloon note at the time of the conversion.
Residence means a property where one or more families reside.
Residential mortgage means a mortgage on single-family housing.
Seasoned mortgage means a mortgage on which the date of the mortgage note is more than one year before the Bank purchased the mortgage.
Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.
Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.
Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.
Very low-income means income not in excess of 50 percent of area median income.
§ 1281.11 Bank housing goals.
(a) Volume threshold. The housing goals established in this section shall apply to a Bank for a calendar year only if the unpaid principal balance (UPB) of the Bank’s purchases of AMA-approved mortgages in that year exceeds $2.5 billion.
(b) Market-based housing goals. A Bank that is subject to the housing goals shall be in compliance with a housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the housing goal. The size of the market for each Bank district shall be determined based on the following criteria:
(1) Only owner-occupied, conventional loans secured by property located in that Bank district shall be considered;
(2) Purchase money mortgages and refinancing mortgages shall be counted only for the applicable housing goal or goals;

Federal Housing Finance Agency

§ 1281.10 General.
Pursuant to the requirements of the Bank Act, as amended (12 U.S.C. 1430c), this subpart establishes:
(a) Three single-family owner-occupied purchase money mortgage housing goals, and one single-family refinancing mortgage housing goal;
(b) A volume threshold for the application of the housing goals to a Bank;
(c) Requirements for measuring performance under the housing goals; and
(d) Procedures for monitoring and enforcing the housing goals.

§ 1281.11 Bank housing goals.
(a) Volume threshold. The housing goals established in this section shall apply to a Bank for a calendar year only if the unpaid principal balance (UPB) of the Bank’s purchases of AMA-approved mortgages in that year exceeds $2.5 billion.
(b) Market-based housing goals. A Bank that is subject to the housing goals shall be in compliance with a housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the housing goal. The size of the market for each housing goal shall be established annually by FHFA for each Bank district based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market for each Bank district shall be determined based on the following criteria:
(1) Only owner-occupied, conventional loans secured by property located in that Bank district shall be considered;
(2) Purchase money mortgages and refinancing mortgages shall be counted only for the applicable housing goal or goals;

Subpart B—Housing Goals

Acquired Member Assets (AMA) program means a program that authorizes a Bank to hold assets acquired from or through Bank members or housing associates by means of either a purchase or funding transaction, subject to the requirements of parts 1268 and 1272 of this chapter.
AMA-approved mortgage means a mortgage that meets the requirements of an AMA program at part 1268 of this chapter, which program has been approved to be implemented under part 1272 of this chapter.

Subpart B—Housing Goals

§ 1281.10 General.
Pursuant to the requirements of the Bank Act, as amended (12 U.S.C. 1430c), this subpart establishes:
(a) Three single-family owner-occupied purchase money mortgage housing goals, and one single-family refinancing mortgage housing goal;
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(d) Procedures for monitoring and enforcing the housing goals.

§ 1281.11 Bank housing goals.
(a) Volume threshold. The housing goals established in this section shall apply to a Bank for a calendar year only if the unpaid principal balance (UPB) of the Bank’s purchases of AMA-approved mortgages in that year exceeds $2.5 billion.
(b) Market-based housing goals. A Bank that is subject to the housing goals shall be in compliance with a housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the housing goal. The size of the market for each housing goal shall be established annually by FHFA for each Bank district based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market for each Bank district shall be determined based on the following criteria:
(1) Only owner-occupied, conventional loans secured by property located in that Bank district shall be considered;
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Subpart B—Housing Goals

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Pursuant to the requirements of the Bank Act, as amended (12 U.S.C. 1430c), this subpart establishes:
(a) Three single-family owner-occupied purchase money mortgage housing goals, and one single-family refinancing mortgage housing goal;
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(c) Requirements for measuring performance under the housing goals; and
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§ 1281.11 Bank housing goals.
(a) Volume threshold. The housing goals established in this section shall apply to a Bank for a calendar year only if the unpaid principal balance (UPB) of the Bank’s purchases of AMA-approved mortgages in that year exceeds $2.5 billion.
(b) Market-based housing goals. A Bank that is subject to the housing goals shall be in compliance with a housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the housing goal. The size of the market for each housing goal shall be established annually by FHFA for each Bank district based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market for each Bank district shall be determined based on the following criteria:
(1) Only owner-occupied, conventional loans secured by property located in that Bank district shall be considered;
(2) Purchase money mortgages and refinancing mortgages shall be counted only for the applicable housing goal or goals;
§ 1281.12 General counting requirements.

(a) Calculating the numerator and denominator for the housing goals. Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Bank transactions or activities that are not AMA-approved mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under §1281.13(b).

(1) The numerator. The numerator of each fraction is the number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular housing goal.

(2) The denominator. The denominator of each fraction is the total number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied single-family properties. A separate denominator shall be calculated for purchase money mortgages and for refinancing mortgages.

(b) Missing data or information for the housing goals.

(1) When a Bank lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal and shall not be included in the numerator for that housing goal.

(2) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage originated. To determine whether mortgages may be counted under a particular family income level (i.e., low- or very low-income), the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under §1281.1.

(c) Credit toward multiple goals. A mortgage purchase by a Bank in a particular year shall count toward the achievement of each housing goal for...
which such purchase qualifies in that year.

(d) Application of median income. For purposes of determining an area’s median income under §1281.1, the area is:

(1) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(2) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county’s median income, the area is the State nonmetropolitan area.

(e) Sampling not permitted. Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(f) Newly available data. When a Bank uses data to determine whether a mortgage purchase counts toward achievement of any housing goal, and new data is released after the start of a calendar quarter, the Bank need not use the new data until the start of the following quarter.

§1281.13 Special counting requirements.

(a) General. FHFA shall determine whether a Bank shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part.

(b) Not counted. The following transactions or activities shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating a Bank’s performance under the housing goals, even if the transaction or activity would otherwise be counted under paragraph (c) of this section:

(1) Purchases of non-conventional single-family mortgages;

(2) Commitments to buy mortgages at a later date or time;

(3) Options to acquire mortgages;

(4) Rights of first refusal to acquire mortgages;

(5) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(6) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(7) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if a Bank already owns, or has an interest in, the balloon note at the time conversion occurs;

(8) Purchases of subordinate lien mortgages (second mortgages);

(9) Purchases of mortgages that were previously counted by a Bank under any current or previous housing goal within the five years immediately preceding the current performance year;

(10) Purchases of mortgages where the property has not been approved for occupancy; and

(11) Any combination of factors in paragraphs (b)(1) through (b)(10) of this section.

(c) Other special rules. Subject to FHFA’s determination of whether a Bank shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the transactions and activities identified in this paragraph (c) shall be treated as mortgage purchases as described. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph. The mortgages from each such transaction or activity shall be included in the denominator in calculating a Bank’s performance under the housing goals, and shall be included in the numerator, as appropriate.

(1) Cooperative housing and condominiums. The purchase by a Bank of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals.

(2) Seasoned mortgages. The purchase of a seasoned mortgage by a Bank shall be treated as a mortgage purchase for purposes of the housing goals, except where the Bank has already counted the mortgage under any current or previous housing goal within the five years immediately preceding the current performance year.
§ 1281.14 Determination of compliance with housing goals; notice of determination.

(a) Determination of compliance with housing goals. On an annual basis, the Director shall determine whether each Bank has exceeded the volume threshold. For each Bank that has exceeded the volume threshold in a year, the Director shall determine the Bank’s performance under each housing goal.

(b) Failure to meet a housing goal. If the Director determines that a Bank has failed to meet any housing goal, the Director shall notify the Bank in writing of such preliminary determination. Any notification to a Bank of a preliminary determination under this section shall provide the Bank with an opportunity to respond in writing in accordance with the following procedures:

(1) Notice. The Director shall provide written notice to a Bank of a preliminary determination under this section, the reasons for such determination, and the information on which the Director based the determination.

(2) Response period—(i) In general. During the 30-day period beginning on the date on which notice is provided under paragraph (b)(1) of this section, the Bank may submit to the Director any written information that the Bank considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether the achievement of such goal was feasible.

(ii) Extended period. The Director may extend the period under paragraph (b)(2)(i) of this section for good cause for not more than 30 additional days.

(iii) Shortened period. The Director may shorten the period under paragraph (b)(2)(i) of this section for good cause.

(iv) Failure to respond. The failure of a Bank to provide information during the 30-day period under this paragraph (b)(2), as extended or shortened, shall waive any right of the Bank to comment on the proposed determination or action of the Director.

(3) Consideration of information and final determination—(i) In general. After the expiration of the response period under paragraph (b)(2) of this section or receipt of information provided during such period by a Bank, the Director shall issue a final determination on:

(A) Whether the Bank has failed to meet the housing goal; and

(B) Whether, taking into consideration market and economic conditions and the financial condition of the Bank, the achievement of the housing goal was feasible.

(ii) Considerations. In making a final determination under paragraph (b)(3)(i) of this section, the Director shall take into consideration any relevant information submitted by a Bank during the response period.

§ 1281.15 Housing plans.

(a) Housing plan requirement. If the Director determines that a Bank has failed to meet any housing goal and that the achievement of the housing goal was feasible, the Director may require the Bank to submit a housing plan for approval by the Director.

(b) Nature of plan. If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;
(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Bank will take to achieve the housing goal for the next calendar year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) Deadline for submission. The Bank shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Bank to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

d) Review of housing plan. The Director shall review and approve or disapprove a housing plan as follows:

(1) Approval. The Director shall review each submission by a Bank, including a housing plan submitted under this section and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Bank Act, this part, and any other applicable provision of law.

(2) Notice of approval and disapproval. The Director shall provide written notice to a Bank submitting a housing plan of the approval or disapproval of the plan, which shall include the reasons for any disapproval of the plan, and of any extension of the period for approval or disapproval.

(e) Resubmission. If the Director disapproves an initial housing plan submitted by a Bank, the Bank shall submit an amended plan acceptable to the Director not later than 15 days after the Director’s disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Bank 15 days to submit a new plan.

(f) Enforcement of housing plan. If the Director finds that a Bank has failed to meet any housing goal, and that the achievement of the housing goal was feasible, and has required the Bank to submit a housing plan under this section, the Director may issue a cease and desist order, or impose civil money penalties, if the Bank refuses to submit such a plan, fails to submit an acceptable plan, or fails to comply with the approved plan. In taking such action, the Director shall follow procedures consistent with those provided in 12 U.S.C. 4581 through 4588 with respect to actions to enforce the housing goals.

Subpart C—Reporting Requirements

§ 1281.20 General.

This subpart establishes data submission and reporting requirements to provide the Director with mortgage and other information relating to the Banks’ performance in connection with the housing goals, as supplemented from time to time in the Banks’ Data Reporting Manual (DRM).

§ 1281.21 Mortgage Reports.

(a) Loan-level data elements. To implement the data collection and submission requirements for mortgage data, and to assist the Director in monitoring the Banks’ housing goal activities, each Bank shall collect and compile computerized loan-level data on each AMA-approved mortgage purchase, as described in the DRM. The Director may, from time to time, issue a list in the DRM specifying the loan-level data elements to be collected and maintained by the Banks and provided to the Director. The Director may revise the DRM list by written notice to the Banks.

(b) Semi-annual Mortgage Reports. Each Bank shall submit to the Director, on a semi-annual basis, a Mortgage Report. The second semi-annual Mortgage Report each year shall serve as the annual Mortgage Report and shall be designated as such. Each Mortgage Report shall include:

(1) Aggregations of the loan-level mortgage data compiled by each Bank under paragraph (a) of this section for year-to-date AMA-approved mortgage purchases, in the format specified in writing by the Director;
§ 1281.22 Periodic reports.

Each Bank shall provide to the Director such reports, information and data as the Director may request from time to time, or as may be supplemented in the DRM.

§ 1281.23 Bank data integrity.

(a) Certification. (1) The senior officer of each Bank who is responsible for submitting the annual Mortgage Report, or for submitting any other report(s), data or other information for which certification is requested in writing by the Director, shall certify such report(s), data or information.

(2) The certification shall state as follows: “To the best of my knowledge and belief, the information provided herein is true, correct and complete.”

(b) Adjustment to correct errors, omissions or discrepancies. FHFA shall determine on an annual basis the official housing goals performance figures for a Bank that is subject to the housing goals. FHFA may resolve any error, omission or discrepancy by adjusting the Bank’s official housing goals performance figure. If the Director determines that the year-end data reported by a Bank for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages that the Director determines were overstated in the prior year’s goal performance.

PART 1282 ENTERPRISE HOUSING GOALS AND MISSION

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Subpart A—General

§ 1282.1 Definitions.

(a) Statutory terms. All terms defined in the Safety and Soundness Act are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) Other terms. As used in this part, the term:

AHAR means the Annual Housing Activities Report that an Enterprise submits to the Director under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act.

AHAR information means data or information contained in the AHAR.

AHS means the American Housing Survey published by HUD and the Department of Commerce.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment (‘‘balloon payment’’) that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Borrower income means the total gross income relied on in making the credit decision.

Charter Act means the Fannie Mae Charter Act, as amended, or the Freddie Mac Act, as amended.

Conventional mortgage means a mortgage other than a mortgage as to which an Enterprise has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

Designated disaster area means any census tract that is located in a county designated by the federal government as adversely affected by a declared major disaster administered by FEMA, where individual assistance payments were authorized by FEMA. A census tract shall be treated as a ‘‘designated disaster area’’ for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation. This time period may be adjusted for a particular disaster area by notice from FHFA to the Enterprises.

Dwelling unit means a room or unified combination of rooms with plumbing and kitchen facilities intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

Efficiency means a dwelling unit having no separate bedrooms or 0 bedrooms.

Extremely low-income means:

(i) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and

(ii) In the case of rental units, income not in excess of 30 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

Families in low-income areas means:

(i) Any family that resides in a census tract in which the median income does not exceed 80 percent of the area median income;

(ii) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(iii) Any family with an income that does not exceed area median income that resides in a designated disaster area.

Family means one or more individuals who occupy the same dwelling unit.


FEMA means the Federal Emergency Management Agency.


Freddie Mac Act means the Federal Home Loan Mortgage Corporation Act, as amended (12 U.S.C. 1451 et seq.).
HOEPA mortgage means a mortgage covered by section 103(bb) of the Home Ownership and Equity Protection Act (HOEPA) (15 U.S.C. 1602(bb)), as implemented by the Bureau of Consumer Financial Protection.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

Low-income means:
(i) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and
(ii) In the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Metropolitan area means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:
(i) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains Tribal affiliation or community attachment;
(ii) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;
(iii) Black or African American—a person having origins in any of the black racial groups of Africa;
(iv) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and
(v) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority census tract means a census tract that has a minority population of at least 30 percent and a median income of less than 100 percent of the area median income.

Moderate-income means:
(i) In the case of owner-occupied units, income not in excess of area median income; and
(ii) In the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families in accordance with this part.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. “Mortgage” includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Enterprises under section 309(m) of the Fannie Mae Charter Act and section 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which an Enterprise bought or otherwise acquired a mortgage or an interest in a mortgage for portfolio, resale, or securitization.

Mortgage revenue bond means a tax-exempt bond or taxable bond issued by a State or local government or agency where the proceeds from the bond issue are used to finance residential housing.

Multifamily housing means a residence consisting of more than four dwelling units. The term includes cooperative buildings and condominium projects.
Non-metropolitan area means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area for which median family income estimates are published annually by HUD.

Owner-occupied housing means single-family housing in which a mortgagor resides, including two- to four-unit owner-occupied properties where one or more units are used for rental purposes.

Participation means a fractional interest in the principal amount of a mortgage.

Private label security means any mortgage-backed security that is neither issued nor guaranteed by Fannie Mae, Freddie Mac, Ginnie Mae, or any other government agency.

Proprietary information means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

Public data means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that the Director determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

Purchase money mortgage means a mortgage given to secure a loan used for the purchase of a single-family residential property.

Refinancing mortgage means a mortgage undertaken by a borrower that satisfies or replaces an existing mortgage of such borrower. The term does not include:

(i) A renewal of a single payment obligation with no change in the original terms;

(ii) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act (15 U.S.C. 1601 et seq.), with a corresponding change in the payment schedule;

(iii) An agreement involving a court proceeding;

(iv) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor’s default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(v) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage;

(vi) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage; and

(vii) A conversion of a balloon mortgage note on a single-family property to a fully amortizing mortgage note where the Enterprise already owns or has an interest in the balloon note at the time of the conversion.

Rent means the actual rent or average rent by unit size for a dwelling unit.

(i) Rent is determined based on the total combined rent for all bedrooms in the dwelling unit, including fees or charges for management and maintenance services and any utility charges that are included.

(A) Rent is net of rental subsidies, i.e., the rent is decreased by any rental subsidy.

(ii) When the rent does not include all utilities, the rent shall also include:

(A) The nationwide average utility allowance, as issued periodically by FHFA;

(B) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located; or

(C) The utility allowance for the area in which the property is located, as established by the state or local housing finance agency for determining the affordability of low-income housing tax credit properties under section 42 of the Internal Revenue Code (26 U.S.C. 42).

Rental unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.
Residential mortgage means a mortgage on single-family or multifamily housing.

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than 1 year before the Enterprise purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Small multifamily property means any multifamily property with at least 5 dwelling units but no more than 50 dwelling units.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for subscription-based television, telephone, or internet service.

Very low-income means:

(i) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

(ii) In the case of rental units, income not in excess of 50 percent of area median income, with adjustments for smaller and larger families in accordance with this part.


§ 1282.1 Definitions.

(b) * * *

Additional Activity, for purposes of subpart C of this part, means an activity in an Enterprise’s Underserved Markets Plan that is not a Statutory Activity or Regulatory Activity.

Agricultural worker, for purposes of subpart C of this part, means any person that meets the definition of an agricultural worker under a federal, state, tribal or local program.

Area of concentrated poverty, for purposes of subpart C of this part, means an identifiable community that meets the definition of a colonia under a federal, State, Tribal, or local program.

Colonia, for purposes of subpart C of this part, means an identifiable community that meets the definition of a colonia under a federal, State, Tribal, or local program.

Community development financial institution, for purposes of subpart C of this part, has the meaning in 12 CFR 1263.1.

Evaluation Guidance, for purposes of subpart C of this part, means separate FHFA-prepared guidance that includes the information required under this subpart, as well as additional guidance on the Underserved Markets Plans, how the quantitative and qualitative assessments will be conducted, the role of extra credit for extra-credit eligible activities such as residential economic diversity, how final ratings will be determined, and other matters as may be appropriate.
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_Federally insured credit union_, for purposes of subpart C of this part, has the meaning in 12 U.S.C. 1732(a).

_Federally recognized Indian tribe_, for purposes of subpart C of this part, has the meaning in 25 CFR 83.1.

* * * * *

_High-needs rural population_, for purposes of subpart C of this part, means any of the following populations provided the population is located in a rural area:

(i) Members of a Federally recognized Indian tribe located in an Indian area; or
(ii) Agricultural workers.

_High-needs rural region_, for purposes of subpart C of this part, means any of the following regions provided the region is located in a rural area:

(i) Middle Appalachia;
(ii) The Lower Mississippi Delta;
(iii) A colonia; or
(iv) A tract located in a persistent poverty county and not included in Middle Appalachia, the Lower Mississippi Delta, or a colonia.

_High opportunity area_, for purposes of subpart C of this part, means:

(i) An area designated by HUD as a “Difficult Development Area,” pursuant to 26 U.S.C. 42(d)(3)(B)(iii), during any year covered by an Underserved Markets Plan or in the year prior to an Underserved Markets Plan’s effective date, whose poverty rate is lower than the rate specified by FHFA in the Evaluation Guidance; and
(ii) An area designated by a state or local Qualified Allocation Plan as a high opportunity area and which meets a definition FHFA has identified as eligible for duty to serve credit in the Evaluation Guidance.

* * * * *

_Indian area_, for purposes of subpart C of this part, has the meaning in 24 CFR 1000.19.

_Insured depository institution_, for purposes of subpart C of this part, means an institution whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

* * * * *

_Lower Mississippi Delta_, for purposes of subpart C of this part, means the Lower Mississippi Delta counties designated by Public Laws 106–460, 109–554, and 107–171, along with any future updates made by Congress.

_Manufactured home_, for purposes of subpart C of this part, means a manufactured home as defined in section 5(b) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq., and implementing regulations.

* * * * *

_MANUFACTURED HOUSING COMMUNITY_, for purposes of subpart C of this part, means a tract of land under unified ownership and developed for the purposes of providing individual rental spaces for the placement of manufactured homes for residential purposes within its boundaries.

* * * * *

_Middle Appalachia_, for purposes of subpart C of this part, means the “central” Appalachian subregion under the Appalachian Regional Commission’s subregional classification of Appalachia.

* * * * *

_Mixed-income housing_, for purposes of subpart C of this part, means a multifamily property or development that may include or comprise single-family units that serves very low-, low-, or moderate-income families where:

(i) A minimum percentage of the units are unaffordable to low-income families, or to families at higher income levels, as specified in the Evaluation Guide; and
(ii) A minimum percentage of the units are affordable to low-income families, or to families at lower income levels, as specified in the Evaluation Guide.

* * * * *

_Persistent poverty county_, for purposes of subpart C of this part, means a county in a rural area that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the most recent successive decennial censuses.

* * * * *

_Regulatory Activity_, for purposes of subpart C of this part, means an activity in an Enterprise’s Underserved Markets Plan that is designated as a Regulatory Activity in §§1282.33(c), 1282.34(d), or 1282.35(c).

* * * * *

_Resident-owned manufactured housing community_, for purposes of subpart C of this part, means a manufactured housing community for which the terms and conditions of residency, policies, operations and management are controlled by at least 51 percent of the residents, either directly or through an entity formed under the laws of the state.

_Residential economic diversity activity_, for purposes of subpart C of this part, means an eligible Enterprise activity, other than an energy or water efficiency improvement activity or other activity that FHFA determines to be ineligible, in connection with mortgages on:
§ 1282.11

(i) Affordable housing in a high opportunity area; or
(ii) Mixed-income housing in an area of concentrated poverty.

* * * * *

Rural area, for purposes of subpart C of this part, means:
(i) A census tract outside of a metropolitan statistical area as designated by the Office of Management and Budget; or
(ii) A census tract in a metropolitan statistical area as designated by the Office of Management and Budget that is outside of the metropolitan statistical area’s Urbanized Areas as designated by the U.S. Department of Agriculture’s (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 4 housing units per square mile for USDA’s RUCA Code #2.

* * * * *

Small financial institution, for purposes of subpart C of this part, means a financial institution with less than $304 million in assets.

* * * * *

Small multifamily rental property, for purposes of subpart C of this part, means any property of 5 to 50 rental units.

Statutory Activity, for purposes of subpart C of this part, means an Enterprise activity relating to housing projects under the programs set forth in 12 U.S.C. 4566(a)(1)(B) and § 1282.34(c).

Underserved Markets Plan, for purposes of subpart C of this part, means a plan prepared by an Enterprise describing the activities and objectives it will undertake to meet its duty to serve each of the three underserved markets.

Subpart B—Housing Goals

§ 1282.11 General.

(a) General. Pursuant to the requirements of the Safety and Soundness Act (12 U.S.C. 4561–4564, 4566), this subpart establishes:

(1) Three single-family owner-occupied purchase money mortgage housing goals, a single-family owner-occupied purchase money mortgage housing subgoal, a single-family refinancing mortgage housing goal, a multifamily special affordable housing goal, and two multifamily special affordable housing subgoals;

(2) Requirements for measuring performance under the goals; and

(3) Procedures for monitoring and enforcing the goals.

(b) Annual goals. Each housing goal shall be established by regulation no later than December 1 of the preceding year, except that any housing goal may be adjusted by regulation to reflect subsequent available data and market developments.


§ 1282.12 Single-family housing goals.

(a) Single-family housing goals. An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds either:

(1) The share of the market that qualifies for the goal; or

(2) The benchmark level for the goal.

(b) Size of market. The size of the market for each goal shall be established annually by FHFA based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 150 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) Low-income families housing goal. The percentage share of each Enterprise’s total purchases of purchase money mortgages on owner-occupied single-family housing that consists of
mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2015, 2016, and 2017 shall be 24 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) Very low-income families housing goal. The percentage share of each Enterprise’s total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2015, 2016, and 2017 shall be 6 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(e) Low-income areas housing goal. The percentage share of each Enterprise’s total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2015, 2016, and 2017 shall be 14 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(f) Refinancing housing goal. The percentage share of each Enterprise’s total purchases of refinancing mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2015, 2016, and 2017 shall be 21 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

§ 1282.13 Multifamily special affordable housing goal and subgoals.

(a) Multifamily housing goal and subgoals. An Enterprise shall be in compliance with a multifamily housing goal or subgoal if its performance under the housing goal or subgoal meets or exceeds the benchmark level for the goal or subgoal, respectively.

(b) Multifamily low-income housing goal. The benchmark level for each Enterprise’s purchases of mortgages on multifamily residential housing affordable to low-income families shall be at least 300,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2015, 2016, and 2017.

(c) Multifamily very low-income housing subgoal. The benchmark level for each Enterprise’s purchases of mortgages on multifamily residential housing affordable to very low-income families shall be at least 60,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2015, 2016, and 2017.

(d) Small multifamily low-income housing subgoal. (1) For the year 2015, the benchmark level for each Enterprise’s
§ 1282.14 Discretionary adjustment of housing goals.

(a) An Enterprise may petition the Director in writing during any year to reduce any goal or subgoal for that year.

(b) The Director shall seek public comment on any such petition for a period of 30 days.

(c) The Director shall make a determination regarding the petition within 50 days after the end of the public comment period. If the Director requests additional information from the Enterprise after the end of the public comment period, the Director may extend the period for a final determination for a single additional 15-day period.

(d) The Director may reduce a goal or subgoal pursuant to a petition for reduction only if:

(1) Market and economic conditions or the financial condition of the Enterprise require such a reduction; or

(2) Efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Charter Acts (12 U.S.C. 1716; 12 U.S.C. 1451 note).

§ 1282.15 General counting requirements.

(a) Calculating the numerator and denominator for single-family housing goals. Performance under each of the single-family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Enter-
prise transactions or activities that are not mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under §1282.16(b).

(1) The numerator. The numerator of each fraction is the number of mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular single-family housing goal.

(2) The denominator. The denominator of each fraction is the total number of mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties. A separate denominator shall be calculated for purchase money mortgages and for refinancing mortgages.

(b) Counting owner-occupied units. (1) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level, i.e., low- or very low-income, the income of the mortgagors is compared to the median income for the area at the time the mortgage was originated, using the appropriate percentage factor provided under §1282.17.

(2) Mortgage purchases financing owner-occupied single-family properties for which the income of the mortgagors is not available shall be included in the denominator for the single-family housing goal or subgoal, but such mortgages shall not be counted in the numerator of any single-family housing goal or subgoal.

(c) Counting dwelling units for multifamily housing goal and subgoals. Performance under the multifamily housing goal and subgoals shall be measured by counting the number of dwelling units that count toward achievement of a particular housing goal or
subgoal in all multifamily properties financed by mortgage purchases by an Enterprise in a particular year. Only dwelling units that are financed by mortgage purchases, as defined by FHFA, and that are not specifically excluded as ineligible under §1282.16(b), may be counted for purposes of the multifamily housing goal and subgoals.

(d) Counting rental units—(1) Use of rent. For purposes of counting rental units toward achievement of the multifamily housing goal and subgoals, mortgage purchases financing such units shall be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal and subgoals. A rent is affordable if the rent does not exceed the maximum levels as provided in §1282.19.

(2) Affordability of rents based on housing program requirements. Where a multifamily property is subject to an affordability restriction under a housing program that establishes the maximum permitted income level for a tenant or a prospective tenant or the maximum permitted rent, the affordability of units in the property may be determined based on the maximum permitted income level or maximum permitted rent established under such housing program for those units. If using income, the maximum income level must be no greater than the maximum income level for each goal, adjusted for family or unit size as provided in §1282.17 or §1282.18, as appropriate. If using rent, the maximum rent level must be no greater than the maximum rent level for each goal, adjusted for unit size as provided in §1282.19.

(3) Unoccupied units. Anticipated rent for unoccupied units may be the market rent for similar units in the neighborhood as determined by the lender or appraiser for underwriting purposes. A unit in a multifamily property that is unoccupied because it is being used as a model unit or rental office may be counted for purposes of the multifamily housing goal and subgoals only if an Enterprise determines that the number of such units is reasonable and minimal considering the size of the multifamily property.

(4) Timeliness of information. In evaluating affordability under the multifamily housing goal and subgoals, each Enterprise shall use tenant and rental information as of the time of mortgage acquisition.

(e) Missing data or information for multifamily housing goal and subgoals. (1) Rental units for which bedroom data are missing shall be considered efficiencies for purposes of calculating unit affordability.

(2) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a multifamily mortgage purchased by an Enterprise counts toward achievement of the multifamily housing goal or subgoals because rental data is not available, an Enterprise’s performance with respect to such unit may be evaluated using estimated affordability information by multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal and subgoal, as determined by FHFA based on the most recent decennial census.

(3) The estimation methodology in paragraph (e)(2) of this section may be used up to a nationwide maximum of 5 percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. Multi-family rental units in excess of this maximum, and any units for which estimation information is not available, shall not be counted for purposes of the multifamily housing goal and subgoals.

(f) Credit toward multiple goals. A mortgage purchase (or dwelling unit financed by such purchase) by an Enterprise in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(g) Application of median income. (1) For purposes of determining an area’s median income under §§1282.17 through 1282.19 and the definitions in §1282.1, the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and
(ii) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county’s median income, the area is the State non-metropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.), if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:
   (i) A census tract; or
   (ii) A census place code.

(h) Sampling not permitted. Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases (or dwelling units) for that year; a sampling of such purchases (or dwelling units) is not acceptable.

   (i) Newly available data. When an Enterprise uses data to determine whether a mortgage purchase (or dwelling unit) counts toward achievement of any goal and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.


§ 1282.16 Special counting requirements.

(a) General. FHFA shall determine whether an Enterprise shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part. In this determination, FHFA will consider whether a transaction or activity of the Enterprise is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the Enterprise’s purposes and is in accordance with its Charter Act.

(b) Not counted. The following transactions or activities shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating either Enterprise’s performance under the housing goals, even if the transaction or activity would otherwise be counted pursuant to paragraph (c) of this section:

   (1) Equity investments in low-income housing tax credits;
   (2) Purchases of State and local government housing bonds except as provided in paragraph (c)(8) of this section;
   (3) Purchases of single-family non-conventional mortgages and multifamily non-conventional mortgages, except:
      (i) Multifamily mortgages acquired under a risk-sharing arrangement with a Federal agency;
      (ii) Multifamily mortgages under other multifamily mortgage programs involving Federal guarantees, insurance or other Federal obligation where FHFA determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals;
   (4) Commitments to buy mortgages at a later date or time;
   (5) Options to acquire mortgages;
   (6) Rights of first refusal to acquire mortgages;
   (7) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;
   (8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;
   (9) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;
   (10) Purchases of subordinate lien mortgages (second mortgages);
   (11) Purchases of mortgages or interests in mortgages that were previously counted by the Enterprise under any current or previous housing goal within the five years immediately preceding the current performance year;
   (12) Purchases of mortgages where the property, or any units within the property, have not been approved for occupancy;
(13) Purchases of private label securities;
(14) Enterprise contributions to the Housing Trust Fund (12 U.S.C. 4568) or the Capital Magnet Fund (12 U.S.C. 4569), and mortgage purchases funded with such grant amounts; and
(15) Any combination of factors in paragraphs (b)(1) through (b)(14) of this section.

(c) Other special rules. Subject to FHFA’s determination of whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the transactions and activities identified in this paragraph (c) shall be treated as mortgage purchases as described. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph. The mortgages (or dwelling units, for the multifamily housing goals) from each such transaction or activity shall be included in the denominator in calculating the Enterprise’s performance under the housing goals, and shall be included in the numerator, as appropriate.

(1) Credit enhancements. (i) Mortgages (or dwelling units) financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when:

(A) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency); and

(B) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds.

(ii) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such activities to count toward achievement of the housing goals.

(2) [Reserved]

(3) Risk-sharing. Mortgages purchased under risk-sharing arrangements between an Enterprise and any Federal agency under which the Enterprise is responsible for a substantial amount of the risk shall be treated as mortgage purchases for purposes of the housing goals.

(4) Participations. Participations purchased by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when the Enterprise’s participation in the mortgage is 50 percent or more.

(5) Cooperative housing and condominiums. (i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals. Such a purchase shall be counted in the same manner as a mortgage purchase of single-family owner-occupied units.

(ii) The purchase of a blanket mortgage on a cooperative building or a mortgage on a condominium project shall be treated as a mortgage purchase for purposes of the housing goals. The purchase of a blanket mortgage on a cooperative building shall be counted in the same manner as a mortgage purchase of a multifamily rental property, except that affordability must be determined based solely on the comparable market rents used in underwriting the blanket loan. If the underwriting rents are not available, the loan shall not be treated as a mortgage purchase for purposes of the housing goals. The purchase of a mortgage on a condominium project shall be counted in the same manner as a mortgage purchase of a multifamily rental property.

(iii) Where an Enterprise purchases both a blanket mortgage on a cooperative building and share loans for units in the same building, both the mortgage on the cooperative building and the share loans shall be treated as mortgage purchases for purposes of the housing goals. Where an Enterprise purchases both a mortgage on a condominium project and mortgages on individual dwelling units in the same
project, both the mortgage on the condominium project and the mortgages on individual dwelling units shall be treated as mortgage purchases for purposes of the housing goals.

(6) Seasoned mortgages. An Enterprise’s purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of the housing goals, except where the Enterprise has already counted the mortgage under any current or previous housing goal within the five years immediately preceding the current performance year.

(7) Purchase of refinancing mortgages. The purchase of a refinancing mortgage by an Enterprise shall be treated as a mortgage purchase for purposes of the housing goals only if the refinancing is an arms-length transaction that is borrower-driven.

(8) Mortgage revenue bonds. The purchase or guarantee by an Enterprise of a mortgage revenue bond issued by a State or local housing finance agency shall be treated as a mortgage purchase for purposes of the housing goals only if the underlying mortgages for purposes of the housing goals only to the extent the Enterprise has sufficient information to determine whether the underlying mortgages or mortgage-backed securities qualify for inclusion in the numerator for one or more housing goal.

(9) [Reserved]

(10) Loan modifications. An Enterprise’s permanent modification, in accordance with the Making Home Affordable program announced on March 4, 2009, of a loan that is held in the Enterprise’s portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase for purposes of the housing goals. Each such permanent loan modification shall be counted in the same manner as a purchase of a refinancing mortgage.

(11)–(13) [Reserved]

(14) Seller dissolution option. (i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases for purposes of the housing goals, only when:

(A) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(B) The transaction is not dissolved during the one-year minimum lockout period.

(ii) The Director may grant an exception to the one-year minimum lockout period described in paragraphs (c)(14)(i)(A) and (B) of this section, in response to a written request from an Enterprise, if the Director determines that the transaction furthers the purposes of the Safety and Soundness Act and the Enterprise’s Charter Act.

(iii) For purposes of this paragraph (c)(14), “seller dissolution option” means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

(d) HOEPA mortgages. HOEPA mortgages shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for each applicable single-family housing goal, but such mortgages shall not be counted in the numerator for any housing goal.

(e) FHFA review of transactions. FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the housing goals, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals. FHFA will make any such determinations available to the public on FHFA’s Web site, www.fhfa.gov.

§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable where income information (and family size, for rental units) is known to the Enterprise, the affordability of the unit shall be determined as follows:

(a) Moderate-income means:
Federal Housing Finance Agency

§ 1282.18

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and
(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

<table>
<thead>
<tr>
<th>Number of persons in family</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>70</td>
</tr>
<tr>
<td>2</td>
<td>80</td>
</tr>
<tr>
<td>3</td>
<td>90</td>
</tr>
<tr>
<td>4</td>
<td>100</td>
</tr>
<tr>
<td>5 or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*100% plus (8% multiplied by the number of persons in excess of 4).

(b) Low-income (80%) means:
(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and
(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

<table>
<thead>
<tr>
<th>Number of persons in family</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>56</td>
</tr>
<tr>
<td>2</td>
<td>64</td>
</tr>
<tr>
<td>3</td>
<td>72</td>
</tr>
<tr>
<td>4</td>
<td>80</td>
</tr>
<tr>
<td>5 or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) Low-income (60%) means:
(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and
(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

<table>
<thead>
<tr>
<th>Number of persons in family</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>35</td>
</tr>
<tr>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td>3</td>
<td>45</td>
</tr>
<tr>
<td>4</td>
<td>50</td>
</tr>
<tr>
<td>5 or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*50% plus (4.0% multiplied by the number of persons in excess of 4).

(d) Very low-income means:
(1) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and
(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

<table>
<thead>
<tr>
<th>Number of persons in family</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>21</td>
</tr>
<tr>
<td>2</td>
<td>24</td>
</tr>
<tr>
<td>3</td>
<td>27</td>
</tr>
<tr>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>5 or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*30% plus (2.4% multiplied by the number of persons in excess of 4).


§ 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

In determining whether a rental unit is affordable where family size is not known to the Enterprise, income will be adjusted using unit size, and affordability determined as follows:
§ 1282.19 Affordability—Rent level definitions—tenant income is not known.

For purposes of determining whether a rental unit is affordable where the income of the family in the dwelling unit is not known to the Enterprise, the affordability of the unit is determined based on unit size as follows:

(a) For moderate-income, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>70</td>
</tr>
<tr>
<td>1 bedroom</td>
<td>75</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>90</td>
</tr>
<tr>
<td>3 bedrooms or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) For low-income (80%), income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>56</td>
</tr>
<tr>
<td>1 bedroom</td>
<td>60</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>72</td>
</tr>
<tr>
<td>3 bedrooms or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) For low-income (60%), income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>42</td>
</tr>
<tr>
<td>1 bedroom</td>
<td>46</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>54</td>
</tr>
<tr>
<td>3 bedrooms or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

(d) For very low-income, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>35</td>
</tr>
<tr>
<td>1 bedroom</td>
<td>37.5</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>45</td>
</tr>
<tr>
<td>3 bedrooms or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

(e) For extremely low-income, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>21</td>
</tr>
<tr>
<td>1 bedroom</td>
<td>22.5</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>27</td>
</tr>
<tr>
<td>3 bedrooms or more</td>
<td>*</td>
</tr>
</tbody>
</table>

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).
§ 1282.21 Housing plans.

(a) General. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) Nature of plan. If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take:

(i) To achieve the goal for the next calendar year; and

(ii) If the Director determines that there is a substantial probability that the Enterprise will fail to meet a housing goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of the year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) Deadline for submission. The Enterprise shall submit the housing plan to

\[\text{the Enterprise in writing of such preliminary determination.}\]

(d) For very low-income, maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>12.6</td>
</tr>
<tr>
<td>1 bedroom</td>
<td>13.5</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>16.2</td>
</tr>
<tr>
<td>3 bedrooms or more</td>
<td>*18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).</td>
</tr>
</tbody>
</table>

(e) For extremely low-income, maximum affordable rents to count as housing for extremely low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

<table>
<thead>
<tr>
<th>Unit size</th>
<th>Percentage of area median income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>6.3</td>
</tr>
<tr>
<td>1 bedroom</td>
<td>6.75</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>8.1</td>
</tr>
<tr>
<td>3 bedrooms or more</td>
<td>*9.36% plus (1.08% multiplied by the number of bedrooms in excess of 3).</td>
</tr>
</tbody>
</table>

§ 1282.31  General.

(a) This subpart sets forth the Enterprise duty to serve three underserved markets as required by section 1335 of the Safety and Soundness Act (12 U.S.C. 4565). This subpart also establishes standards and procedures for annually evaluating and rating Enterprise compliance with the duty to serve underserved markets.

(b) Nothing in this subpart permits or requires an Enterprise to engage in any activity that would otherwise be inconsistent with its Charter Act or the Safety and Soundness Act.

§ 1282.32  Underserved Markets Plan.

(a) General. Each Enterprise must submit to FHFA an Underserved Markets Plan describing the activities and objectives it will undertake to meet its duty to serve each of the three underserved markets. Plan activities and objectives may cover a single year or multiple years.

(b) Term of Plan. Each Enterprise’s Plan must cover a period of three years.

(c) Effective date of Plans. Where an underserved market in a Plan receives a Non-Objection from FHFA by December 1 of the prior year, the effective date for that underserved market in the Plan will be January 1 of the first evaluation year for which the Plan is applicable. Where an underserved market in a Plan does not receive a Non-Objection from FHFA by December 1 of the prior year, the effective date for that underserved market in the Plan will be as determined by FHFA.

(d) Plan content.—(1) Consideration of minimum number of activities. The Enterprises must consider and address in their Plans a minimum number of Statutory Activities or Regulatory Activities for each underserved market. The minimum number will be determined by FHFA and stated in the Evaluation Guidance as provided for in §1282.36(d). An Enterprise will select the specific Statutory Activities or Regulatory Activities to address in its Plan under this requirement. For the statutory programs in §1282.34(c)(5) and (c)(6) are excluded for this purpose.

(2) Additional Activities. An Enterprise may also include in its Plan Additional Activities eligible to serve an underserved market. For the Additional Activities included by the Enterprise, the Enterprise must address in its Plan how it will undertake the activities and related objectives, or the reasons why it will not undertake the activities. The statutory programs in §1282.34(c)(5) and (c)(6) are excluded for this purpose.

(3) Residential economic diversity activities. If an Enterprise chooses to undertake a residential economic diversity activity for extra credit under §1282.36(c)(3), the Enterprise must describe the activity and related objectives in its Plan.

(e) Objectives. Each Statutory Activity, Regulatory Activity, and Additional Activity in an Enterprise’s Plan must comprise one or more objectives, which are the specific action items
that the Enterprises will identify for each activity. Each objective must meet all of the following requirements:

(1) Strategic. Directly or indirectly maintain or increase liquidity to an underserved market;

(2) Measurable. Provide measurable benchmarks, which may include numerical targets, that enable FHFA to determine whether the Enterprise has achieved the objective;

(3) Realistic. Be calibrated so that the Enterprise has a reasonable chance of meeting the objective with appropriate effort;

(4) Time-bound. Be subject to a specific timeframe for completion by being tied to Plan calendar year evaluation periods; and

(5) Tied to analysis of market opportunities. Be based on assessments and analyses of market opportunities in each underserved market, taking into account safety and soundness considerations.

(f) Evaluation areas. Each Plan objective must meet at least one of the evaluation areas set forth in §1282.36(b). An Enterprise must designate in its Plan the one evaluation area under which each Plan objective will be evaluated.

(g) Plan procedures.—(1) Submission of proposed Plans.—(i) First proposed Plan. An Enterprise’s first proposed Plan must be submitted to FHFA within 90 days after FHFA posts the proposed Evaluation Guidance on FHFA’s Web site pursuant to §1282.36(d)(3).

(ii) Subsequent proposed Plans. For subsequent proposed Plans after the first Plan, FHFA will establish a timeframe and procedures for FHFA review, comments, and any required Enterprise revisions.

(ii) Designation of Statutory Activity or Regulatory Activity. FHFA may, in its discretion, designate in the Evaluation Guidance one Statutory Activity or Regulatory Activity in each underserved market that FHFA will significantly consider in determining whether to provide a Non-Objection to that underserved market in a proposed Plan.

(iii) FHFA Non-Objections to underserved markets in a proposed Plan. After FHFA is satisfied that all of its comments on an underserved market in a proposed Plan have been addressed, FHFA will issue a Non-Objection for that underserved market in the Plan.

(iv) FHFA Non-Objections to underserved markets in a proposed Plan. After FHFA is satisfied that all of its comments on an underserved market in a proposed Plan have been addressed, FHFA will issue a Non-Objection for that underserved market in the Plan.

(6) Effective date of an underserved market in a Plan. Where an underserved market in a Plan receives a Non-Objection from FHFA by December 1 of the prior year, the effective date for that underserved market in the Plan will be January 1 of the first evaluation year for which the Plan is applicable. Where an underserved market in a Plan does not receive a Non-Objection from
FHFA by December 1 of the prior year, the effective date for that underserved market in the Plan will be as determined by FHFA.

(7) Posting of an underserved market section in a Plan. As soon as practicable after FHFA issues a Non-Objection to an underserved market in a Plan, that section of the Plan will be posted on the Enterprise’s and FHFA’s respective Web sites, with any confidential and proprietary data and information omitted.

(h) Modification of a Plan. At any time after implementation of a Plan, an Enterprise may request to modify its Plan during the three-year term, subject to FHFA Non-Objection of the proposed modifications. FHFA may also require an Enterprise to modify its Plan during the three-year term. FHFA and the Enterprise may seek public input on proposed modifications to a Plan if FHFA determines that public input would assist its consideration of the proposed modifications. If a Plan is modified, the modified Plan, with any confidential and proprietary information and data omitted, will be posted on the Enterprise’s and FHFA’s respective Web sites.

§ 1282.33 Manufactured housing market.

(a) Duty in general. Each Enterprise must develop loan products and flexible underwriting guidelines to facilitate a secondary market for eligible mortgages on manufactured homes for very low-, low-, and moderate-income families. Enterprise activities under this section must serve each such income group in the year for which the Enterprise is evaluated and rated.

(b) Eligible activities. Enterprise activities eligible to be included in an Underserved Markets Plan for the manufactured housing market are activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, or moderate-income families consisting of manufactured homes titled as real property or personal property; and manufactured housing communities.

(c) Regulatory Activities. Enterprise activities related to the following are eligible to receive duty to serve credit under the manufactured housing market:

(1) Manufactured homes titled as real property. Mortgages on manufactured homes titled as real property;

(2) Chattel. Loans on manufactured homes titled as personal property, including both pilot and ongoing initiatives;

(3) Manufactured housing communities owned by a governmental entity, non-profit organization, or residents. Mortgages on manufactured housing communities that are owned by a governmental unit or instrumentality, a non-profit organization, or residents;

(4) Manufactured housing communities with certain pad lease protections. Manufactured housing communities with pad leases that have the following pad lease protections at a minimum, or manufactured housing communities that are subject to state or local laws requiring pad lease protections that equal or exceed the following pad lease protections:

(i) One-year renewable lease term unless there is good cause for nonrenewal;

(ii) Thirty-day written notice of rent increases;

(iii) Five-day grace period for rent payments and right to cure defaults on rent payments;

(iv) Tenant has the right to sell the manufactured home without having to first relocate it out of the community;

(v) Tenant has the right to sublease or assign the pad lease for the unexpired term to the new buyer of the tenant’s manufactured home without any unreasonable restraint;

(vi) Tenant has the right to post “For Sale” signs;

(vii) Tenant has the right to sell the manufactured home in place within a reasonable time period after eviction by the manufactured housing community owner; and

(viii) Tenant has the right to receive at least 60 days advance notice of a planned sale or closure of the manufactured housing community.

(d) Additional Activities. An Enterprise may include in its Plan other activities to serve very low-, low-, or moderate-income families in the manufactured housing market consistent with paragraph (b) of this section, subject to FHFA determination of whether the
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Additional Activity is eligible to receive duty to serve credit.

§ 1282.34 Affordable housing preservation market.

(a) Duty in general. Each Enterprise must develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families under eligible housing programs or activities. Enterprise activities under this section must serve each such income group in the year for which the Enterprise is evaluated and rated.

(b) Eligible activities. Enterprise activities eligible to be included in an Underserved Markets Plan for the affordable housing preservation market are activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, or moderate-income families consisting of affordable rental housing preservation and affordable homeownership preservation.

(c) Statutory Activities. Enterprise activities related to housing projects under the following programs in the Safety and Soundness Act (12 U.S.C. 4565(a)(1)(B)) are eligible to receive duty to serve credit under the affordable housing preservation market:

1. Section 8. The project-based and tenant-based rental assistance housing programs under section 8 of the U.S. Housing Act of 1937, 42 U.S.C. 1437f;

2. Section 236. The rental and cooperative housing program for lower income families under section 236 of the National Housing Act, 12 U.S.C. 1715z–1;

3. Section 221(d)(4). The housing program for moderate-income and displaced families under section 221(d)(4) of the National Housing Act, 12 U.S.C. 1715l;

4. Section 202. The supportive housing program for the elderly under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q;

5. Section 811. The supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 8013;


7. Section 515. The rural rental housing program under section 515 of the Housing Act of 1949, 42 U.S.C. 1485;

8. Low-income housing tax credits. Low-income housing tax credits under section 42 of the Internal Revenue Code of 1986, 26 U.S.C. 42; and

9. Other comparable state or local affordable housing programs. Other comparable affordable housing programs administered by a state or local government that preserve housing affordable to very low-, low-, and moderate-income families. An Enterprise may include in its Plan statutory programs pursuant to this paragraph (c)(9), subject to FHFA determination that the program is comparable to one of the statutory programs in this paragraph (c) in the way it provides subsidy and preserves affordable housing for the income-eligible households.

(d) Regulatory Activities. Enterprise activities related to the following are eligible to receive duty to serve credit under the affordable housing preservation market:

1. Financing of small multifamily rental properties. Financing of small multifamily rental properties by a community development financial institution, insured depository institution, or federally insured credit union, where the entity’s total assets are $10 billion or less;

2. Energy or water efficiency improvements on multifamily rental properties. Energy or water efficiency improvements on multifamily rental properties provided there are projections made based on credible and generally accepted standards that the improvements financed by the loan will reduce energy or water consumption by the tenant or the property by at least 15 percent, and the energy or water savings generated over an improvement’s expected life will exceed the cost of installation;

3. Energy or water efficiency improvements on single-family, first lien properties. Energy or water efficiency improvements on single-family, first-lien properties, provided there are projections made based on credible and generally accepted standards that the improvements financed by the loan will
reduce energy or water consumption by the homeowner, the tenant, or the property by at least 15 percent, and the utility savings generated over an improvement’s expected life will exceed the cost of installation;

(4) **Shared equity programs for affordable homeownership preservation.**—(i) Affordable homeownership preservation through one of the following shared equity homeownership programs:

(A) Resale restriction programs administered by community land trusts, other nonprofit organizations, or state or local governments or instrumentalities; or

(B) Shared appreciation loan programs administered by community land trusts, other nonprofit organizations, or state or local governments or instrumentalities that may or may not partner with a for-profit institution to invest in, originate, sell, or service shared appreciation loans.

(ii) A program in paragraph (d)(4)(i) must:

(A) Provide homeownership opportunities to very low-, low-, or moderate-income households;

(B) Utilize a ground lease, deed restriction, subordinate loan, or similar legal mechanism that includes provisions stating that the program will keep the home affordable for subsequent very low-, low-, or moderate-income families, the affordability term is at least 30 years after recordation, a resale formula applies that limits the homeowner’s proceeds upon resale, and the program administrator or its assignee has a preemptive option to purchase the homeownership unit from the homeowner at resale; and

(C) Support homebuyers and homeowners to promote sustainable homeownership, including reviewing and pre-approving refinances and home equity lines of credit.

(5) **HUD Choice Neighborhoods Initiative.** The HUD Choice Neighborhoods Initiative, as authorized by 42 U.S.C. 1437v;

(6) **HUD Rental Assistance Demonstration program.** The HUD Rental Assistance Demonstration program, as authorized by 42 U.S.C.1437f note; and

(7) **Purchase or rehabilitation of certain distressed properties.** Lending programs for the purchase or rehabilitation by very low-, low-, or moderate-income families, or by nonprofit organizations or local or tribal governments serving such families, of homes eligible for short sale, homes eligible for foreclosure sale, or properties that a lender acquires as a result of foreclosure.

(e) **Additional Activities.** An Enterprise may include in its Plan other activities to serve very low-, low-, or moderate-income families in the affordable housing preservation market consistent with paragraph (b) of this section, subject to FHFA determination of whether the activities are eligible to receive duty to serve credit.

§ 1282.35 Rural markets.

(a) **Duty in general.** Each Enterprise must develop loan products and flexible underwriting guidelines to facilitate a secondary market for eligible mortgages on housing for very low-, low-, and moderate-income families in rural areas. Enterprise activities under this section must serve each such income group in the year for which the Enterprise is evaluated and rated.

(b) **Eligible activities.** Enterprise activities eligible to be included in an Underserved Markets Plan for the rural market are activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, or moderate-income families in rural areas.

(c) **Regulatory Activities.** Enterprise activities related to the following are eligible to receive duty to serve credit under the rural market:

(1) **High-needs rural regions.** Housing in high-needs rural regions;

(2) **High-needs rural populations.** Housing for high-needs rural populations;

(3) **Financing by small financial institutions of rural housing.** Financing by a small financial institution of housing in a rural area; and

(4) **Small multifamily rental properties in rural areas.** Small multifamily rental properties that are located in a rural area.

(d) **Additional Activities.** An Enterprise may include in its Plan other activities to serve very low-, low-, or moderate-income families in rural areas consistent with paragraph (b) of this section, subject to FHFA determination of
§ 1282.36 Evaluations, ratings, and Evaluation Guidance.

(a) Evaluation of compliance. In determining whether an Enterprise has complied with the duty to serve each underserved market, FHFA will annually evaluate and rate the Enterprise’s duty to serve performance based on the Enterprise’s implementation of its Underserved Markets Plan during the relevant evaluation year. FHFA’s evaluation will be in accordance with separate, FHFA-prepared Evaluation Guidance as provided for in paragraph (d) of this section.

(b) Evaluation areas. As provided in §1282.32(f), an Enterprise must specify in its Plan the evaluation area under which each Plan objective will be evaluated. FHFA will evaluate an Enterprise’s performance of each of its Plan objectives under one of the following four evaluation areas, as designated by the Enterprise in its Plan:

(1) Outreach. The extent of the Enterprise’s outreach to qualified loan sellers and other market participants in each underserved market;

(2) Loan product. The Enterprise’s development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing in each underserved market;

(3) Loan purchase. The volume of loan purchases by the Enterprise in each underserved market relative to the market opportunities available to the Enterprise; and

(4) Investments and grants. The amount of the Enterprise’s investments and grants in projects that assist in meeting the needs of each underserved market.

(c) Evaluation process. At the end of each evaluation year, FHFA will evaluate each Enterprise’s performance under its Plan based on quantitative and qualitative assessments of the Enterprise’s accomplishment of the objectives for the activities under each underserved market in its Plan. Following the quantitative and qualitative assessments, FHFA may provide extra credit for extra credit-eligible residential economic diversity activities in an underserved market in a Plan, and for other extra credit-eligible activities in an underserved market in a Plan as may be designated by FHFA in the Evaluation Guidance.

(1) Quantitative assessment. FHFA will conduct a quantitative assessment which will evaluate the level of an Enterprise’s accomplishment of each objective for each activity in an underserved market in its Plan, based on the level of accomplishment needed for the objectives in order to receive a passing rating for compliance with the Duty to Serve an underserved market in a Plan, as established by FHFA in the Evaluation Guidance. At the conclusion of the quantitative assessment for an underserved market in a Plan, FHFA will determine whether an Enterprise has passed or failed the required level of accomplishment.

(2) Qualitative assessment. FHFA will conduct a qualitative assessment which will evaluate the Enterprise’s accomplishment of each objective for each activity in an underserved market in its Plan, based on the method and criteria established by FHFA in the Evaluation Guidance, such as how skillfully an objective was implemented, the impact of the objective, and such other criteria as FHFA may set forth in the Evaluation Guidance.

(3) Extra credit-eligible activities. FHFA may provide extra credit for extra credit-eligible residential economic diversity activities included in an underserved market in a Plan, and for other extra credit-eligible activities included in an underserved market in a Plan, where such other activities are designated by FHFA in the Evaluation Guidance. FHFA will conduct its assessment of an Enterprise’s accomplishment of activities that are eligible for extra credit based on the method and criteria established by FHFA in the Evaluation Guidance, such as how skillfully an objective was implemented, the impact of the objective, and such other criteria as FHFA may set forth in the Evaluation Guidance.

(4) Ratings.—(1) Assignment of ratings. Based on the quantitative, qualitative and extra credit assessments, FHFA will assign a rating of Exceeds, High...
§ 1282.37 General requirements for credit.

(a) General. FHFA will determine whether an activity included in an Enterprise’s Underserved Markets Plan will receive duty to serve credit or extra credit under an underserved market in the Plan. In this determination, FHFA will consider whether the activity facilitates a secondary market for financing mortgages: On manufactured homes for very low-, low-, and moderate-income families; to preserve housing affordable to very low-, low-, and moderate-income families; and on housing for very low-, low-, and moderate-income families in rural areas. If FHFA determines that an activity will receive duty to serve credit or extra credit under an underserved market in the Plan, the activity will receive such credit under the relevant evaluation area for each underserved market it serves.

(b) No credit under any evaluation area. Enterprise activities related to the following are not eligible to receive duty to serve credit under any evaluation area under an underserved market, even if the activity otherwise would receive credit under any other section of this subpart, except as provided in this section:

(1) For the first Plan. (A) FHFA will provide to the Enterprises the proposed Evaluation Guidance for use by both Enterprises for a three-year term.

(2) Contents. The Evaluation Guidance will include the information required under this subpart, as well as additional guidance on Enterprise Plans, how the quantitative and qualitative assessments will be conducted, the role of extra credit, how final ratings will be determined, and other matters as may be appropriate.

(3) Timelines for Evaluation Guidance. (i) For the first Plan. (A) FHFA will provide to the Enterprises the proposed Evaluation Guidance for the first Plan within 30 days after the posting of this subpart on FHFA’s Web site.

FHFA will post the proposed Evaluation Guidance on FHFA’s Web site as soon as practicable after providing it to the Enterprises.

(B) The proposed Evaluation Guidance will be available for public input for a period of 120 days following its posting on FHFA’s Web site.

(C) FHFA will provide the Evaluation Guidance to the Enterprises no later than the time FHFA provides comments to the Enterprises on their proposed Plans.

(ii) For subsequent Plans. FHFA will provide timelines for the Evaluation Guidance for subsequent Plans after the first Plan, including public input periods, 300 days before the termination date of the Plan in effect, or a later date if additional time is necessary.

(4) Posting of Evaluation Guidance. The final Evaluation Guidance will be posted on the Enterprises’ and FHFA’s respective Web sites as soon as practicable after the Evaluation Guidance is finalized.

(5) Modification of Evaluation Guidance. From time to time, FHFA may modify the Evaluation Guidance prior to or during the Evaluation Guidance’s three-year term. FHFA may seek public input on proposed modifications to the Evaluation Guidance if FHFA determines that public input would assist its consideration of the proposed modifications. Modified Evaluation Guidance will be effective on January 1 of the year after the modified Evaluation Guidance is posted. FHFA will post the modified Evaluation Guidance on FHFA’s Web site as soon as practicable after modified.
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(1) Contributions to the Housing Trust Fund (12 U.S.C. 4568) and the Capital Magnet Fund (12 U.S.C. 4569), and mortgage purchases funded with such grant amounts;
(2) HOEPA mortgages;
(3) Subordinate liens on multifamily properties, except for subordinate liens originated for energy or water efficiency improvements on multifamily rental properties that meet the requirements in §1282.34(d)(2);
(4) Subordinate liens on single-family properties, except for shared appreciation loans that satisfy all of the requirements in §1282.34(d)(4) of this part;
(5) Low-Income Housing Tax Credit equity investments in a property, except where the property is located in a rural area;
(6) Permanent construction take-out loans and Additional Activities under the affordable housing preservation market, except as provided in paragraph (c) of this section; and
(7) Any combination of factors in paragraphs (b)(1) through (b)(6) of this section.

(c) Credit for certain permanent construction take-out loans and Additional Activities under the affordable housing preservation market. Enterprise activities related to permanent construction take-out loans and Additional Activities under the affordable housing preservation market are eligible for duty to serve credit, provided the following requirements are met, as applicable:

(1) Permanent construction take-out loans.—(i) The permanent construction take-out loans preserve existing subsidies on affordable housing with regulatory periods of required affordability that are at least as restrictive as the longest affordability restriction applicable to the subsidy or subsidies being preserved; or
(ii) The permanent construction take-out loans are for housing developed under state or local inclusionary zoning, real estate tax abatement, or loan programs, where the property owner has agreed to restrict a portion of the units for occupancy by very low-, low-, or moderate-income families, and to restrict the rents that can be charged for those units at affordable rents to those populations, or where the property is developed for a shared equity program that meets the requirements under §1282.34(d)(4), and where there is a regulatory agreement, recorded use restriction, or deed restriction in place that maintains affordability for the term defined by the state or local program.

(2) Additional Activities. Additional Activities that either:
(i) Involve preserving existing subsidy where the term of affordability required for the subsidy is followed, or where there is a deed restriction for affordability for the life of the loan; or
(ii) Involve preserving the affordability of properties in conjunction with state or local inclusionary zoning, real estate tax abatement, or loan programs, where a regulatory agreement, recorded use restriction, or deed restriction maintains affordability of a portion of the property’s units for the term defined by the state or local program.

(d) No credit under loan purchase evaluation area. The following activities are not eligible to receive duty to serve credit under the loan purchase evaluation area, even if the activity otherwise would receive duty to serve credit under §1282.38:

(1) Purchases of mortgages to the extent they finance any dwelling units that are secondary residences;
(2) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;
(3) Purchases of mortgages or interests in mortgages that previously received credit under any underserved market within the five years immediately preceding the current performance year;
(4) Purchases of mortgages where the property or any units within the property have not been approved for occupancy;
(5) Any interests in mortgages that FHFA determines will not be treated as interests in mortgages;
(6) Purchases of state and local government housing bonds except as provided in §1282.39(h); and
(7) Any combination of factors in paragraphs (d)(1) through (d)(6) of this section.
(e) FHFA review of activities or objectives. FHFA may determine whether and how any activity or objective will receive duty to serve credit under an underserved market in a Plan, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any activity or objective. FHFA will make any such determinations available to the public on FHFA’s Web site.

(f) The year in which an activity or objective will receive credit. An activity or objective that FHFA determines will receive duty to serve credit under an underserved market in a Plan will receive such credit in the year in which the activity or objective is completed. FHFA may determine that credit is appropriate for an activity or objective in which an Enterprise engages, but does not complete, in a particular year, except that activities or objectives under the loan purchase evaluation area will receive credit in the year in which the Enterprise purchased the mortgage.

(g) Credit under one evaluation area. An activity or objective will receive duty to serve credit under only one evaluation area in a particular underserved market.

(h) Credit under multiple underserved markets. An activity or objective, including financing of dwelling units by an Enterprise’s mortgage purchase, will receive duty to serve credit under each underserved market for which the activity or objective qualifies in that year.

§ 1282.38 General requirements for loan purchases.

(a) General. This section applies to Enterprise mortgage purchases that may receive duty to serve credit under the loan purchase evaluation area for a particular underserved market in a Plan. Only dwelling units securing a mortgage purchased by the Enterprise in that year and not specifically excluded under §1282.37(b) and (d) may receive credit.

(b) Counting dwelling units. Performance under the loan purchase evaluation area will be measured by counting dwelling units affordable to very low-, low-, and moderate-income families.

(c) Credit for owner-occupied units.—(1) Mortgage purchases financing owner-occupied single-family properties will be evaluated based on the income of the mortgagor(s) and the area median income at the time the mortgage was originated. To determine whether mortgages may receive duty to serve credit under a particular family income level, i.e., very low-, low-, or moderate-income, the income of the mortgagor(s) is compared to the median income for the area at the time the mortgage was originated, using the appropriate percentage factor provided under §1282.17.

(2) Mortgage purchases financing owner-occupied single-family properties for which the income of the mortgagor(s) is not available will not receive duty to serve credit under the loan purchase evaluation area.

(d) Credit for rental units.—(1) Use of rent. For Enterprise mortgage purchases financing single-family rental units and multifamily rental units, affordability is determined based on rent and whether the rent is affordable to the income groups targeted by the duty to serve. A rent is affordable if the rent does not exceed the maximum levels as provided in §1282.19.

(2) Affordability of rents based on housing program requirements. Where a multifamily property is subject to an affordability restriction under a housing program that establishes the maximum permitted income level for a tenant or a prospective tenant or the maximum permitted rent, the affordability of units in the property may be determined based on the maximum permitted income level or maximum permitted rent established under such housing program for those units. If using income, the maximum income level must be no greater than the maximum income level for each income group targeted by the duty to serve, adjusted for family or unit size as provided in §1282.17 or §1282.18, as appropriate. If using rent, the maximum rent level must be no greater than the maximum rent level for each income group targeted by the duty to serve, adjusted for unit size as provided in §1282.19.
(3) **Unoccupied units.** Anticipated rent for unoccupied units may be the market rent for similar units in the neighborhood as determined by the lender or appraiser for underwriting purposes. A unit in a multifamily property that is unoccupied because it is being used as a model unit or rental office may receive duty to serve credit only if the Enterprise determines that the number of such units is reasonable and minimal considering the size of the multifamily property.

(4) **Timeliness of information.** In evaluating affordability for single-family rental properties, an Enterprise must use tenant income and area median income available at the time the mortgage was originated. For multifamily rental properties, the Enterprise must use tenant income and area median income available at the time the mortgage was acquired.

(e) **Missing data or information for rental units.**—(1) When calculating unit affordability, rental units for which bedroom data are missing will be considered efficiencies.

(2) When an Enterprise lacks sufficient information to determine whether a rental unit in a single-family or multifamily property securing a mortgage purchased by the Enterprise receives duty to serve credit under the loan purchase evaluation area because rental data are not available, the Enterprise’s performance with respect to such unit may be evaluated using estimated affordability information, except that an Enterprise may not estimate affordability of rental units for purposes of receiving extra credit for residential economic diversity activities or objectives, the affordability of the homes in the community is determined as follows:

(i) If the median income of the census tract in which the manufactured housing community is located is less than or equal to the area median income, then all homes in the community are treated as affordable;

(ii) If the median income of the census tract in which the manufactured housing community is located exceeds the area median income, then the number of homes that are treated as affordable is determined by dividing the area median income by the median income of the census tract in which the community is located and multiplying the resulting ratio by the total number of homes in the community.

(g) **Application of median income.**—(1) To determine an area’s median income under §§1282.17 through 1282.19 and the definitions in §1282.1, the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and
(ii) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county’s median income, the area is the State non-metropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise must determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.), if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:
   (i) A census tract; or
   (ii) A census place code.

(h) Newly available data. When an Enterprise uses data to determine whether a dwelling unit may receive duty to serve credit under the loan purchase evaluation area and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

§ 1282.39 Special requirements for loan purchases.

(a) General. Subject to FHFA’s determination of whether an activity or objective will receive duty to serve credit under a particular underserved market, the activities or objectives identified in this section will be treated as mortgage purchases as described and receive credit under the loan purchase evaluation area. An activity or objective that is covered by more than one paragraph below must satisfy the requirements of each such paragraph.

(b) Credit enhancements.—(1) Dwelling units financed under a credit enhancement entered into by an Enterprise will be treated as mortgage purchases only when:
   (i) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency); and
   (ii) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds.

(2) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such transactions to receive credit under the loan purchase evaluation area for a particular underserved market.

(c) Risk-sharing. Mortgages purchased under risk-sharing arrangements between an Enterprise and any federal agency under which the Enterprise is responsible for a substantial amount of the risk will be treated as mortgage purchases.

(d) Participations. Participations purchased by an Enterprise will be treated as mortgage purchases only when the Enterprise’s participation in the mortgage is 50 percent or more.

(e) Cooperative housing and condominiums.—(1) The purchase of a mortgage on a cooperative housing unit (“a share loan”) or a mortgage on a condominium unit will be treated as a mortgage purchase. Such a purchase will receive duty to serve credit in the same manner as a mortgage purchase of single-family owner-occupied units, i.e., affordability is based on the income of the mortgagor(s).

(2) The purchase of a blanket mortgage on a cooperative building or a mortgage on a condominium project will be treated as a mortgage purchase. The purchase of a blanket mortgage on a cooperative building will receive duty to serve credit in the same manner as a mortgage purchase of a multifamily rental property, except that affordability must be determined based solely on the comparable market rents used in underwriting the blanket loan. If the underwriting rents are not available, the loan will not be treated as a mortgage purchase. The purchase of a mortgage on a condominium project will receive duty to serve credit in the same manner as a mortgage purchase of a multifamily rental property.
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(3) Where an Enterprise purchases both a blanket mortgage on a cooperative building and share loans for units in the same building, both the mortgage on the cooperative building and the share loans will be treated as mortgage purchases. Where an Enterprise purchases both a mortgage on a condominium project and mortgages on individual dwelling units in the same project, both the mortgage on the condominium project and the mortgages on individual dwelling units will be treated as mortgage purchases.

(f) Seasoned mortgages. An Enterprise’s purchase of a seasoned mortgage will be treated as a mortgage purchase.

(g) Purchase of refinancing mortgages. The purchase of a refinancing mortgage by an Enterprise will be treated as a mortgage purchase only if the refinancing is an arms-length transaction that is borrower-driven.

(h) Mortgage revenue bonds. The purchase or guarantee by an Enterprise of a mortgage revenue bond issued by a state or local housing finance agency will be treated as a purchase of the underlying mortgages only to the extent the Enterprise has sufficient information to determine whether the underlying mortgages or mortgage-backed securities serve the income groups targeted by the duty to serve.

(i) Seller dissolution option.—(1) Mortgages acquired through transactions involving seller dissolution options will be treated as mortgage purchases only when:

(i) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(ii) The transaction is not dissolved during the one-year minimum lockout period.

(2) FHFA may grant an exception to the one-year minimum lockout period described in paragraphs (i)(1)(i) and (i)(1)(ii) of this section, in response to a written request from an Enterprise, if FHFA determines that the transaction furthers the purposes of the Enterprise’s Charter Act and the Safety and Soundness Act.

(3) For purposes of paragraph (i) of this section, “seller dissolution option” means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

§ 1282.40 Failure to comply.

If the Director determines that an Enterprise has not complied with, or there is a substantial probability that an Enterprise will not comply with, the duty to serve a particular underserved market in a given year and the Director determines that such compliance is or was feasible, the Director will follow the procedures in 12 U.S.C. 4566(b).

§ 1282.41 Housing plans.

(a) General. If the Director determines that an Enterprise did not comply with, or there is a substantial probability that an Enterprise will not comply with, the duty to serve a particular underserved market in a given year, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) Nature of housing plan. If the Director requires a housing plan, the housing plan must:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take:

(i) To comply with the duty to serve a particular underserved market for the next calendar year; or

(ii) To make such improvements and changes in its operations as are reasonable in the remainder of the year, if the Director determines that there is a substantial probability that the Enterprise will fail to comply with the duty to serve a particular underserved market in such year; and

(4) Address any additional matters relevant to the housing plan as required, in writing, by the Director.

(c) Deadline for submission. The Enterprise must submit the housing plan to the Director within 45 days after issuance of a notice requiring the Enterprise to submit a housing plan. The Director may extend the deadline for
submission of a housing plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) Review of housing plans. The Director will review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (c)(5).

(e) Resubmission. If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise must submit an amended housing plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial housing plan. The Director may extend the deadline if the Director determines that an extension is in the public interest. If the amended housing plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new housing plan.

Subpart D—Reporting Requirements

§ 1282.61 General.

This subpart establishes data submission and reporting requirements to carry out the requirements of the Enterprises' Charter Acts and the Safety and Soundness Act.

§ 1282.62 Mortgage reports.

(a) Loan-level data elements. To implement the data collection and submission requirements for mortgage data, and to assist the Director in monitoring the Enterprises' housing goal activities, each Enterprise shall collect and compile computerized loan-level data on each mortgage purchased in accordance with 12 U.S.C. 1456(e) and 1723a(m). The Director may, from time to time, issue a list entitled "Required Loan-level Data Elements" specifying the loan-level data elements to be collected and maintained by the Enterprises and provided to the Director. The Director may revise the list by written notice to the Enterprises.

(b) Quarterly Mortgage Reports. Each Enterprise shall submit to the Director a quarterly Mortgage Report. The fourth quarter Mortgage Report shall serve as the Annual Mortgage Report and shall be designated as such. Each Mortgage Report shall include:

1. Aggregations of the loan-level mortgage data compiled by the Enterprise under paragraph (a) of this section for year-to-date mortgage purchases, in the format specified in writing by the Director;
2. Year-to-date dollar volume, number of units, and number of mortgages on owner-occupied and rental properties purchased by the Enterprise that do, and do not, qualify under each housing goal as set forth in this part; and
3. Year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(c) Timing of Reports. The Enterprises shall submit the Mortgage Report for each of the first 3 quarters of each year within 60 days of the end of the quarter. Each Enterprise shall submit its Annual Mortgage Report within 75 days after the end of the calendar year.

(d) Revisions to Reports. At any time before submission of its Annual Mortgage Report, an Enterprise may revise any of its quarterly reports for that year.

(e) Format. The Enterprises shall submit to the Director computerized loan-level data with the Mortgage Report, in the format specified in writing by the Director.

§ 1282.63 Annual Housing Activities Report.

To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and assist the Director in preparing the Director's Annual Report to Congress, each Enterprise shall submit to the Director an AHAR including the information listed in those sections of the Charter Acts. Each Enterprise shall submit such report within 75 days after the end of each calendar year, to the Director, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Each Enterprise shall make its AHAR available to the public online and at its principal and regional offices. Before making any such report available to the public, the Enterprise
may exclude from the report any information that the Director has deemed proprietary.

§ 1282.64 Periodic reports.
Each Enterprise shall provide to the Director such reports, information and data as the Director may request from time to time.

§ 1282.65 Enterprise data integrity.
(a) Certification. (1) The senior officer of each Enterprise who is responsible for submitting the fourth quarter Annual Mortgage Report and the AHAR under sections 309(m) and (n) of the Fannie Mae Charter Act or sections 307(e) and (f) of the Freddie Mac Act, as applicable, or for submitting any other report(s), data or information for which certification is requested in writing by the Director, shall certify such report(s), data or information.
(2) The certification shall state as follows: “To the best of my knowledge and belief, the information provided herein is true, correct and complete.”
(b) Adjustment to correct errors, omissions or discrepancies in AHAR data. FHFA shall determine the official housing goal performance figure for each Enterprise under the housing goals on an annual basis. FHFA may resolve any error, omission or discrepancy by adjusting the Enterprise’s official housing goal performance figure. If the Director determines that the year-end data reported by an Enterprise for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages (or dwelling units) that the Director determines were overstated in the prior year’s goal performance.

§ 1282.66 Enterprise reports on duty to serve.
(a) First and third quarter reports. Each Enterprise must submit to FHFA a first and third quarter report on its activities and objectives under each underserved market in its Underserved Markets Plan for the loan purchase evaluation area. The report must include detailed year-to-date information on the Enterprise’s progress towards meeting the activities and objectives in its Plan. The Enterprise must submit the first and third quarter reports to FHFA within 60 days of the end of the respective quarter.
(b) Second quarter report. Each Enterprise must submit to FHFA a second quarter report on all of the activities and objectives under each underserved market in its Underserved Markets Plan. The report must include detailed year-to-date information on the Enterprise’s progress towards meeting the activities and objectives under each underserved market in its Plan, and contain narrative and summary statistical information for the Plan objectives, supported by appropriate transaction level detail. The Enterprise must submit the second quarter report to FHFA within 60 days of the end of the second quarter.
(c) Annual report. To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and for purposes of FHFA’s Annual Housing Report to Congress, each Enterprise must submit to FHFA an annual report on all of the activities and objectives under each underserved market in its Underserved Markets Plan no later than 75 days after the end of each calendar year. For each underserved market, the Enterprise’s annual report must include, at a minimum: A description of the Enterprise’s market opportunities for loan purchases during the evaluation year to the extent data is available; the volume of qualifying loans purchased by the Enterprise during the evaluation year; a comparison of the Enterprise’s loan purchases with its loan purchases in prior years; a comparison of market opportunities with the size of the relevant markets in the past, to the extent data is available; and narrative and summary statistical information for the Plan objectives, supported by appropriate transaction level data.
(d) Public disclosure of information from reports. FHFA will make public certain information from the first, second, and third quarter reports at a reasonable time after the end of the calendar year for which they apply, with any confidential and proprietary information and data omitted. FHFA will
make public certain information from the annual reports at a reasonable time after receiving them from the Enterprises, with any confidential and proprietary information and data omitted.

In the third year of the Underserved Markets Plans, FHFA will make public certain narrative information from the year’s second quarter report, excluding data under the loan purchase evaluation area and any confidential and proprietary information and data, at a reasonable time after receiving it within the calendar year.

[81 FR 96300, Dec. 29, 2016]

EFFECTIVE DATE NOTE: At 81 FR 96300, Dec. 29, 2016, §1282.66 was added, effective Jan. 30, 2017.

PART 1290—COMMUNITY SUPPORT REQUIREMENTS

Sec.
1290.1 Definitions.
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1290.4 FHFA review and decision on Community Support Statements.
1290.5 Probation or restriction on member access to long-term Bank advances.
1290.6 Bank community support programs.
1290.7 Bank Advisory Council Annual Reports.

AUTHORITY: 12 U.S.C. 1430(g), 4511, 4513.

SOURCE: 80 FR 30342, May 28, 2015, unless otherwise noted.

§1290.1 Definitions.

For purposes of this part:
Advisory Council means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)) and part 1291 of this chapter.

CDFI Fund means the Community Development Financial Institutions Fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(a)).

Community development financial institution or CDFI means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.).


CRA evaluation means the public disclosure portion of the CRA performance evaluation provided by a member’s appropriate Federal banking agency.

Displaced homemaker means an adult who has not worked full-time, full-year in the labor force for a number of years, and during that period, worked primarily without remuneration to care for a home and family, and currently is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

First-time homebuyer means:
(1) An individual and his or her spouse, if any, who has had no present ownership interest in a principal residence during the three-year period prior to purchase of a principal residence.
(2) A displaced homemaker who, except for owning a residence with his or her spouse or residing in a residence owned by his or her spouse, meets the requirements of paragraph (1) of this definition.
(3) A single parent who, except for owning a residence with his or her spouse or residing in a residence owned by his or her spouse, meets the requirements of paragraph (1) of this definition.

Long-term advance means an advance with a term to maturity greater than one year.

Restriction on access to long-term advances means a member may not borrow long-term advances or renew any maturing advance for a term to maturity greater than one year.

Single parent means an individual who is unmarried or legally separated from a spouse and has custody of joint custody of one or more minor children or is pregnant.

Targeted community lending means providing financing for economic development projects for targeted beneficiaries.

[80 FR 30342, May 28, 2015, as amended at 81 FR 76300, Nov. 2, 2016]
§ 1290.2 Community support requirements.

(a) Bank notice to members. By June 29, 2015, and by March 31, 2017, and every two years thereafter, each Bank must provide written notice to all of its members subject to community support review that each such member must submit to FHFA a completed Community Support Statement in accordance with the requirements of paragraph (b) of this section. Unless instructed otherwise by FHFA, the Bank must provide to each member a blank Community Support Statement Form, which will also be available on FHFA’s Web site. Upon a member’s request, the Bank must provide assistance to the member in completing the Community Support Statement.

(b) Community Support Statement.—(1) Submission requirements. Except as provided in paragraph (b)(2) of this section, each member that is subject to community support review must submit to FHFA a completed Community Support Statement and any other related information FHFA may require by December 31, 2015, and by December 31 every two years thereafter. The member’s completed Community Support Statement must be executed by an appropriate senior officer of the member and must be submitted to FHFA pursuant to FHFA’s submission instructions.

(2) Transition provision. Members that were selected for community support review during the 2014–2015 review cycle prior to June 29, 2015 are required to submit completed Community Support Statements as provided in the applicable Federal Register Notice. Members that have submitted or submitted completed Community Support Statements to FHFA as required in the applicable Federal Register Notice for the 2014–2015 review cycle are not required to submit a second Community Support Statement to FHFA by the December 31, 2015 deadline.

(c) Notice to public.—(1) By the Banks. By June 29, 2015, and by March 31, 2017, and every two years thereafter, each Bank must provide written notice to its Advisory Council, and to interested nonprofit housing developers, community groups, and other interested parties in its district, and include a notice on its public Web site, of the opportunity to submit comments on the community support programs and activities of Bank members, with the name and address of each member subject to community support review and the deadline and FHFA contact information for submission of any comments to FHFA.

(2) By FHFA. FHFA may publish a notice in the Federal Register notifying the public of the opportunity to submit comments on the community support programs and activities of Bank members, with the deadline and FHFA contact information for submission of any comments to FHFA.

(3) Consideration of comments. In reviewing a member for compliance with the community support requirements, FHFA will take into consideration any public comments it has received concerning the member.

(d) Non-Depository Community Development Financial Institutions. A member that has been certified as a community development financial institution by the CDFI Fund, other than a member that also is an insured depository institution or a CDFI credit union (as defined in 12 CFR 1263.1), is deemed to be in compliance with the community support requirements of section 10(g) of the Federal Home Loan Bank Act (12 U.S.C. 1430(g)) and this part, by virtue of that certification. Such non-depository CDFIs, therefore, are not required to submit Community Support Statements to FHFA under paragraph (b) of this section and are not subject to community support review under this part.

(e) New Bank members. A member of a Bank is not required to submit a Community Support Statement under paragraph (b) of this section unless the institution has been a member of a Bank for at least one year as of March 31 of the year in which submissions are due under paragraph (b) of this section.

§ 1290.3 Community support standards.

(a) In general. A member subject to community support review meets the community support requirements of this part if it submits a completed Community Support Statement that demonstrates to FHFA’s satisfaction
that the member complies with both the CRA standard, if the member is subject to the requirements of the CRA, and the first-time homebuyer standard.

(b) CRA standard. A member meets the CRA standard if it is subject to the requirements of the CRA and the rating in the member’s most recent CRA evaluation is “Outstanding” or “Satisfactory.”

(c) First-time homebuyer standard. A member meets the first-time homebuyer standard if at least one of the following is satisfied:

(1) The member is subject to the requirements of the CRA and the rating in the member’s most recent CRA evaluation is “Outstanding”;

(2) The member has an established record of lending to first-time homebuyers;

(3) The member has a program whereby it actively seeks to lend or support lending to first-time homebuyers, including, but not limited to, the following—

(i) Providing special credit products with flexible underwriting standards for first-time homebuyers;

(ii) Participating in Federal, State, or local government, or nationwide homeownership lending programs that benefit, serve, or are targeted to, first-time homebuyers; or

(iii) Participating in loan consortia for first-time homebuyer loans or loans that serve predominantly low- or moderate-income borrowers;

(4) The member has a program whereby it actively seeks to assist or support organizations that assist potential first-time homebuyers to qualify for mortgage loans, including, but not limited to, the following—

(i) Providing, participating in, or supporting special counseling programs or other homeownership education activities that benefit, serve, or are targeted to, first-time homebuyers;

(ii) Providing or participating in marketing plans and related outreach programs targeted to first-time homebuyers;

(iii) Providing technical assistance or financial support to organizations that assist first-time homebuyers;

(iv) Participating with or financially supporting community or nonprofit groups that assist first-time homebuyers;

(v) Holding investments or making loans that support first-time homebuyer programs;

(vi) Holding mortgage-backed securities that may include a pool of loans to low- and moderate-income homebuyers;

(vii) Participating or investing in service organizations that assist credit unions in providing mortgages to first-time homebuyers or low- or moderate-income households; or

(viii) Participating in a Bank Affordable Housing Program or other Bank targeted community investment or development program;

(5) The member engages in other activities, not covered by paragraphs (c)(1) through (c)(4) of this section, that demonstrate to FHFA’s satisfaction the member’s support for first-time homebuyers financing; or

(6) FHFA determines that mitigating factors affect the member’s ability to engage in activities to assist first-time or potential first-time homebuyers as described in paragraphs (c)(1) through (c)(5) of this section.

§ 1290.4 FHFA review and decision on Community Support Statements.

(a) Review by FHFA. FHFA will review each member approximately once every two years for compliance with the community support requirements of this part.

(b) Complete Community Support Statements. A Community Support Statement is complete when a member has provided to FHFA all of the information required by this part.

(c) Decision on Community Support Statements. FHFA will provide written notice to the member’s Bank of FHFA’s determination regarding the Community Support Statement submitted by the member. A notice placing a member on probation or restricting the member’s access to long-term Bank advances will identify the reasons for FHFA’s determination. The Bank must promptly notify the member of FHFA’s determination regarding the member’s Community Support Statement.
§ 1290.5 Probation or restriction on member access to long-term Bank advances.

(a) Probation. FHFA will place a member on probation if the member is subject to the CRA, its most recent CRA rating was “Needs to Improve,” and either the member has not received any other CRA rating or its second-most recent CRA rating was “Outstanding” or “Satisfactory.”

(b) Restriction. FHFA will restrict a member’s access to long-term advances if:

(1) The member failed to sign its Community Support Statement submitted to FHFA pursuant to § 1290.2(b)(1), failed to include its CRA rating in its Community Support Statement submitted to FHFA if subject to the CRA, or failed to submit a Community Support Statement at all to FHFA;

(2) The member is subject to the CRA and its most recent CRA rating was “Substantial Noncompliance”;

(3) The member is subject to the CRA, its most recent CRA rating was “Needs to Improve,” and its second-most recent CRA rating was “Needs to Improve”;

(4) The member is subject to the CRA, its most recent CRA rating was “Needs to Improve,” its second-most recent CRA rating was “Substantial Noncompliance,” and its third-most recent CRA rating was “Needs to Improve” or “Substantial Noncompliance”; or

(5) The member has not demonstrated compliance with the first-time homebuyer standard.

(c) Effective dates.—(1) Probation. A probationary period under § 1290.5(a) will extend until the member’s appropriate Federal banking agency completes its next CRA evaluation and issues a rating for the member. Probation will take effect on the date the notice required under § 1290.4(c) is sent by FHFA to the Bank. The member will be eligible to receive long-term advances during the probationary period.

(2) Restriction. A restriction on access to long-term advances will take effect 30 days after the date the notice required under § 1290.4(c) is sent by FHFA to the Bank, unless the member demonstrates compliance with the requirements of this part before the end of the 30-day period.

(d) Removing a restriction.—(1) FHFA may remove a restriction on a member’s access to long-term advances imposed under this section if FHFA determines that application of the restriction may adversely affect the safety and soundness of the member. A member may submit a written request to FHFA to remove a restriction on access to long-term advances under this paragraph (d)(1). The written request must include a clear and concise statement of the basis for the request and a statement that application of the restriction may adversely affect the safety and soundness of the member from the member’s appropriate Federal banking agency or the member’s appropriate State regulator for a member that is not subject to regulation or supervision by a Federal regulator. FHFA will consider each written request within 30 calendar days of receipt.

(2) FHFA may remove a restriction on a member’s access to long-term advances imposed under this section if FHFA determines that the member subsequently has complied with the requirements of this part. A member may submit a written request to FHFA to remove a restriction on access to long-term advances under this paragraph (d)(2). The written request must state with specificity how the member has complied with the requirements of this part. FHFA will consider each written request within 30 calendar days of receipt.

(3) FHFA may remove a restriction on a member’s access to long-term advances imposed under this section and place the member on probation if the member is subject to the CRA, its most recent CRA rating was “Needs to Improve,” its second-most recent CRA rating was “Substantial Noncompliance,” and either the member has not received any other CRA rating or its third-most recent CRA rating was “Outstanding” or “Satisfactory.”

(4) FHFA will provide written notice to the member’s Bank of any determination to remove a restriction. FHFA’s determination shall take effect
§ 1290.6 Bank community support programs.

(a) Requirement. Consistent with the safe and sound operation of the Bank, each Bank shall establish and maintain a community support program. A Bank’s community support program shall:

(1) Provide technical assistance to members;

(2) Promote and expand affordable housing finance;

(3) Identify opportunities for members to expand financial and credit services in underserved neighborhoods and communities;

(4) Encourage members to increase their targeted community lending and affordable housing finance activities by providing incentives such as awards or technical assistance to nonprofit housing developers or community groups with outstanding records of participation in targeted community lending or affordable housing finance partnerships with members; and

(5) Include an annual Targeted Community Lending Plan, approved by the Bank’s board of directors and subject to modification, which shall require the Bank to—

(i) Conduct market research in the Bank’s district;

(ii) Describe how the Bank will address identified credit needs and market opportunities in the Bank’s district for targeted community lending;

(iii) Consult with its Advisory Council and with members, housing associates, and public and private economic development organizations in the Bank’s district in developing and implementing its Targeted Community Lending Plan; and

(iv) Establish quantitative targeted community lending performance goals.

(b) Notice. A Bank shall provide annually to each of its members a written notice:

(1) Identifying CICA programs and other Bank activities that may provide opportunities for a member to meet the community support requirements and to engage in targeted community lending; and

(2) Summarizing targeted community lending and affordable housing activities undertaken by members, housing associates, nonprofit housing developers, community groups, or other entities in the Bank’s district that may provide opportunities for a member to meet the community support requirements and to engage in targeted community lending.

§ 1290.7 Bank Advisory Council Annual Reports.

Each Annual Report submitted by a Bank’s Advisory Council to FHFA pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)) must include an analysis of the Bank’s targeted community lending and affordable housing activities.

PART 1291—FEDERAL HOME LOAN BANKS’ AFFORDABLE HOUSING PROGRAM

§ 1291.1 Definitions.

§ 1291.2 Required annual AHP contributions; allocation of contributions.

§ 1291.3 AHP Implementation Plan.

§ 1291.4 Advisory Councils.

§ 1291.5 Competitive application program.

§ 1291.6 Homeownership set-aside programs.

§ 1291.7 Monitoring.

§ 1291.8 Remedial actions for noncompliance.

§ 1291.9 Agreements.

§ 1291.10 Conflicts of interest.

§ 1291.11 Temporary suspension of AHP contributions.

§ 1291.12 Affordable Housing Reserve Fund.

Federal Housing Finance Agency

§ 1291.1 Definitions.

As used in this part:

Affordable means that:

(1) The rent charged to a household for a unit that is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 persons per unit without a separate bedroom); or

(2) The rent charged to a household, for rental units subsidized with Section 8 assistance under 42 U.S.C. 1437f or subsidized under another assistance program where the rents are charged in the same way as under the Section 8 program, if the rent complied with this § 1291.1 of this part at the time of the household’s initial occupancy and the household continues to be assisted through the Section 8 or another assistance program, respectively.

AHP project means a single-family or multifamily housing project for owner-occupied or rental housing that has been awarded or has received AHP subsidy under the competitive application program.

Competitive application program means a program established by a Bank under which the Bank awards and disburses AHP subsidy through a competitive application scoring process pursuant to the requirements of § 1291.5 of this part.

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment.

Eligible household means a household that meets the income limits and other requirements specified by a Bank for its competitive application program and homeownership set-aside programs, provided that:

(1) In the case of owner-occupied housing, the household’s income may not exceed 80 percent of the median income for the area; and

(2) In the case of rental housing, the household’s income in at least 20 percent of the units may not exceed 50 percent of the median income for the area.

Eligible project means a project eligible to receive AHP subsidy pursuant to the requirements of this part.

Eligible targeted refinancing program means a program offered by the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Agriculture (USDA), the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), a State or local government, or a State or local housing finance agency for the limited purpose of refinancing (i.e., paying off) first mortgages on primary residences for households that cannot afford or are at risk of not being able to afford their monthly payments, as defined by the program, in order to prevent foreclosure.

Family member means any individual related to a person by blood, marriage, or adoption.

Funding period means a time period, as determined by a Bank, during which the Bank accepts AHP applications for subsidy.

Homeownership set-aside program means a program established by a Bank under which the Bank disburses AHP direct subsidy pursuant to the requirements of § 1291.6 of this part.

Loan pool means a group of mortgage or other loans meeting the requirements of this part that are purchased, pooled, and held in trust.

Low- or moderate-income household means a household that has an income of 80 percent or less of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard, unless such median income standard has no household size adjustment methodology.

Low- or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area means one or more of the following median income standards as determined by a
Bank, after consultation with its Advisory Council, in its AHP Implementation Plan:

(1) The median income for the area, as published annually by HUD;

(2) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(3) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a state agency or instrumentality;

(4) The median income for the area, as published by the United States Department of Agriculture; or

(5) The median income for an applicable definable geographic area, as published by a federal, state, or local government entity, and approved by the FHFA, at the request of a Bank, for use under the AHP.

Multifamily building means a structure with 5 or more dwelling units.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank’s annual contribution to the Resolution Funding Corporation required under section 21B of the Act (12 U.S.C. 1441b), and before declaring or paying any dividend under section 16 of the Act (12 U.S.C. 1436). For purposes of this part, “dividend” includes any dividends on capital stock subject to a redemption request even if under GAAP those dividends are treated as an “interest expense.”

Owner-occupied project means, for purposes of the competitive application program, one or more owner-occupied units in a single-family or multifamily building, including condominiums, cooperative housing, and manufactured housing.

Owner-occupied unit means a dwelling unit occupied by the owner of the unit. Housing with 2 to 4 dwelling units consisting of one owner-occupied unit and one or more rental units is considered a single owner-occupied unit.

Program means the Affordable Housing Program established pursuant to this part.

Rental project means, for purposes of the competitive application program, one or more dwelling units for occupancy by households that are not owner-occupants, including overnight and emergency shelters, transitional housing for homeless households, mutual housing, single-room occupancy housing, and manufactured housing.

Retention period means:

(1) Five years from closing for an AHP-assisted owner-occupied unit, or in the case of rehabilitation of a unit currently occupied by the owner where there is no closing, 5 years from the date established by the Bank in its AHP Implementation Plan; and

(2) Fifteen years from the date of project completion for a rental project.

Revolving loan fund means a capital fund established to make mortgage or other loans whereby loan principal is repaid into the fund and re-lent to other borrowers.

Single-family building means a structure with 1 to 4 dwelling units.

Sponsor means a not-for-profit or for-profit organization or public entity that:

(1) Has an ownership interest (including any partnership interest), as defined by the Bank in its AHP Implementation Plan, in a rental project;

(2) Is integrally involved, as defined by the Bank in its AHP Implementation Plan, in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units;

(3) Operates a loan pool; or

(4) Is a revolving loan fund.

Subsidy means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy must equal the net present value of the interest foregone from making the loan below the lender’s market interest rate; or

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank’s cost of funds.

Very low-income household means a household that has an income at or below 50 percent of the median income.
§ 1291.3

for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard, unless such median income standard has no household size adjustment methodology.

Visited means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

§ 1291.2 Required annual AHP contributions; allocation of contributions.

(a) Annual AHP contributions. Each Bank shall contribute annually to its Program the greater of:

(1) 10 percent of the Bank’s net earnings for the previous year; or

(2) That Bank’s pro rata share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year, except that the required annual AHP contribution for a Bank shall not exceed its net earnings in the previous year.

(b) Allocation of contributions. Each Bank, after consultation with its Advisory Council and pursuant to written policies adopted by the Bank’s board of directors, shall allocate its annual required AHP contribution as follows:

(1) Competitive application program. Each Bank shall allocate annually that portion of its annual required AHP contribution that is not set aside to fund homeownership set-aside programs under paragraph (b)(2) of this section, to provide funds to members through a competitive application program, pursuant to the requirements of this part.

(2) Homeownership set-aside programs—

(i) Allocation amount; first-time homebuyers. A Bank, in its discretion, may set aside annually, in the aggregate, up to the greater of $4.5 million or 35% of the Bank’s annual required AHP contribution to provide funds to members participating in homeownership set-aside programs, including a mortgage refinancing set-aside program established under §1291.6(f), provided that at least one-third of the Bank’s aggregate annual set-aside allocation to such programs shall be to assist first-time homebuyers, pursuant to the requirements of this part.

(ii) No delegation. A Bank’s board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting its homeownership set-aside program policies.

(iii) Additional funding. A Bank may accelerate to its current year’s program from future annual required AHP contributions an amount up to the greater of $5 million or 20% of its annual required AHP contribution for the current year. The Bank may credit the amount of the accelerated contribution against required AHP contributions under this part 1291 over one or more of the subsequent five years.

§ 1291.3 AHP Implementation Plan.

(a) Adoption; no delegation. Each Bank, after consultation with its Advisory Council, shall adopt a written AHP Implementation Plan, and shall not amend the AHP Implementation Plan without first consulting its Advisory Council. The Bank’s board of directors shall not delegate to Bank officers or other Bank employees the responsibility to consult with the Advisory Council prior to adopting or amending the AHP Implementation Plan. The AHP Implementation Plan shall set forth, at a minimum:

(1) The applicable median income standard or standards adopted by the Bank consistent with the definition of median income for the area in §1291.1 of this part;

(2) The Bank’s requirements for its competitive application program established pursuant to §1291.5 of this part;

(3) The Bank’s requirements for its homeownership set-aside programs, if adopted by the Bank pursuant to §1291.6 of this part;

(4) The Bank’s requirements for funding revolving loan funds, if adopted by
the Bank pursuant to §1291.5(c)(13) of this part;
(5) The Bank’s requirements for funding loan pools, if adopted by the Bank pursuant to §1291.5(c)(14) of this part;
(6) The Bank’s requirements for monitoring under its competitive application program and any Bank homeownership set-aside programs, pursuant to §1291.7 of this part;
(7) The Bank’s requirements, including time limits, for re-use of repaid AHP direct subsidy, if adopted by the Bank pursuant to §1291.8(f)(2) of this part; and
(8) The retention agreement requirements for projects and households under the competitive application program and any Bank homeownership set-aside programs, pursuant to §1291.9(a)(7) and (a)(8) of this part.

(b) Advisory Council review. Prior to the amendment of a Bank’s AHP Implementation Plan, the Bank shall provide its Advisory Council an opportunity to review the document, and the Advisory Council shall provide its recommendations to the Bank’s board of directors for its consideration.

(c) Notification of Plan amendments to the FHFA. A Bank shall notify the FHFA of any amendments made to its AHP Implementation Plan within 30 days after the date of their adoption by the Bank’s board of directors.

(d) Public access. A Bank shall publish its current AHP Implementation Plan on its publicly available Web site, and shall publish any amendments to the AHP Implementation Plan on the Web site within 30 days after the date of their adoption by the Bank’s board of directors.

§ 1291.4 Advisory Councils.
(a) Appointment. (1) Each Bank’s board of directors shall appoint an Advisory Council of 7 to 15 persons who reside in the Bank’s District and are drawn from community and not-for-profit organizations that are actively involved in providing or promoting low- and moderate-income housing and community lending, in the District.

(2) Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient time for responses.

(b) Terms of Advisory Council members. Pursuant to policies adopted by the Bank’s board of directors, Advisory Council members shall be appointed by the Bank’s board of directors to serve for terms of 3 years, which shall be staggered to provide continuity in experience and service to the Advisory Council, except that Advisory Council members may be appointed to serve for terms of 1 or 2 years solely for purposes of reconfiguring the staggering of the 3-year terms. No Advisory Council member may be appointed to serve for more than 3 full consecutive terms. An Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office.

(c) Election of officers. Each Advisory Council shall elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(d) Duties—(1) Meetings with the Banks. (i) The Advisory Council shall meet with representatives of the Bank’s board of directors at least quarterly to provide advice on ways in which the Bank can better carry out its housing finance and community lending mission, including, but not limited to, advice on the low- and moderate-income housing and community lending programs and needs in the Bank’s District, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(ii) The Advisory Council’s advice shall include recommendations on:
(A) The amount of AHP subsidies to be allocated to the Bank’s competitive
application program and any Bank homeownership set-aside programs;
(B) The AHP Implementation Plan and any subsequent amendments there-
(C) The scoring criteria, related defi-
nitions, and any additional optional
District eligibility requirements for
the competitive application program;
and
(D) The eligibility requirements and
any priority criteria for any Bank
homeownership set-aside programs.
(2) Summary of AHP applications. The
Bank shall comply with requests from
the Advisory Council for summary in-
formation regarding AHP applications
from prior funding periods.
(3) Annual analysis; public access. (i)
Each Advisory Council annually shall
submit to the FHFA by May 1 its anal-
ysis of the low- and moderate-income
housing and community lending activ-
ity of the Bank by which it is ap-
pointed.
(ii) Within 30 days after the date the
Advisory Council’s annual analysis is
submitted to the FHFA, the Bank shall
publish the analysis on its publicly
available Web site.
(e) Expenses. The Bank shall pay Ad-
visory Council members’ travel ex-
penses, including transportation and
subsistence, for each day devoted to at-
tending meetings with representatives
of the board of directors of the Bank
and meetings requested by the FHFA.
(f) No delegation. A Bank’s board of
directors shall not delegate to Bank of-
icers or other Bank employees the re-
sponsibility to appoint persons as
members of the Advisory Council, or to
meet with the Advisory Council at the
quarterly meetings required by the
Bank Act (12 U.S.C. 1430(j)(11)).
[71 FR 59286, Oct. 6, 2006, as amended at 81 FR
76300, Nov. 2, 2016]
§ 1291.5 Competitive application pro-
gram.
(a) Establishment of program. A Bank
shall establish a competitive applica-
tion program pursuant to the require-
ments of this part.
(b) Funding periods and application
process—(1) Funding periods. A Bank
may accept applications for AHP sub-
sidy under its competitive application
program during a specified number of
funding periods each year, as deter-
mined by the Bank.
(2) Eligible applicants. A Bank shall
accept applications for AHP subsidy
under its competitive application pro-
gram only from institutions that are
members of the Bank at the time the
application is submitted to the Bank.
(3) Submission of applications. Except
as provided in paragraph (c)(13)(i) of
this section, a Bank shall require appli-
cations for AHP subsidy to contain in-
formation sufficient for the Bank to:
(i) Determine that the proposed AHP
project meets the eligibility require-
ments of paragraph (c) of this section;
and
(ii) Evaluate the application pursuant
to the scoring guidelines adopted
by the Bank pursuant to paragraph (d)
of this section.
(4) Review of applications submitted.
Except as provided in paragraph
(c)(13)(ii) of this section, a Bank shall
review the applications for AHP sub-
sidy to determine that the proposed
AHP project meets the eligibility re-
quirements of paragraph (c) of this sec-
tion, and shall evaluate the applica-
tions pursuant to the Bank’s scoring
guidelines adopted pursuant to para-
graph (d) of this section.
(c) Minimum eligibility requirements.
Projects receiving AHP subsidies pur-
suant to a Bank’s competitive applica-
tion program must meet the following
eligibility requirements:
(1) Owner-occupied or rental housing.
The AHP subsidy shall be used exclu-
sively for:
(i) Owner-occupied housing. The pur-
chase, construction, or rehabilitation
of an owner-occupied project by or for
very low-income or low- or moderate-
income households. A household must
have an income meeting the income
targeting commitments in the ap-
proved AHP application at the time it
is qualified by the project sponsor for
participation in the project.
(ii) Rental housing. The purchase,
construction, or rehabilitation of a
rental project, where at least 20 per-
cent of the units in the project are oc-
cupied by and affordable for very low-
income households. A household must
have an income meeting the income
targeting commitments in the ap-
proved AHP application upon initial
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occupancy of the rental unit, or for projects involving the purchase or rehabilitation of rental housing that already is occupied, at the time the application for AHP subsidy is submitted to the Bank for approval.

(2) Need for subsidy. (i) The project’s estimated sources of funds shall equal its estimated uses of funds, as reflected in the project’s development budget. The difference between the project’s sources of funds and uses of funds is the project’s need for AHP subsidy, which is the maximum amount of AHP subsidy the project may receive. A Bank, in its discretion, may permit a project’s sources of funds to include or exclude the estimated market value of in-kind donations and voluntary professional labor or services (excluding the value of sweat equity), provided that the project’s uses of funds also include or exclude, respectively, the value of such estimates.

(ii) A project’s cash sources of funds shall include any cash contributions by the sponsor, any cash from sources other than the sponsor, and estimates of funds the project sponsor intends to obtain from other sources but which have not yet been committed to the project. In the case of homeownership projects where the sponsor extends permanent financing to the homebuyer, the sponsor’s cash contribution shall include the present value of any payments the sponsor is to receive from the buyer, which shall include any cash down payment from the buyer, plus the present value of any purchase note the sponsor holds on the unit. If the note carries a market interest rate commensurate with the credit quality of the buyer, the present value of the note equals the face value of the note. If the note carries an interest rate below the market rate, the present value of the note shall be determined using the market rate to discount the cash flows.

(iii) A project’s cash uses are the actual outlay of cash needed to pay for materials, labor, and acquisition or other costs of completing the project. Cash costs do not include in-kind donations, voluntary professional labor or services, or sweat equity.

(3) Project costs—(i) In general. (A) Taking into consideration the geographic location of the project, development conditions, and other non-financial household or project characteristics, a Bank shall determine that a project’s costs, as reflected in the project’s development budget, are reasonable, in accordance with the Bank’s project cost guidelines.

(B) For purposes of determining the reasonableness of a developer’s fee for a project as a percentage of total development costs, a Bank may, in its discretion, include estimates of the market value of in-kind donations and volunteer professional labor or services (excluding the value of sweat equity) committed to the project as part of the total development costs.

(ii) Cost of property and services provided by a member. The purchase price of property or services, as reflected in the project’s development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to the project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the “as-is” or “as-rehabilitated” value of the property, whichever is appropriate. That value shall be reflected in an independent appraisal of the property performed by a state certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), within 6 months prior to the date the Bank disburses AHP subsidy to the project.

(4) Project feasibility—(i) Developmental feasibility. The project must be likely to be completed and occupied, based on relevant factors contained in the Bank’s project feasibility guidelines, including, but not limited to, the development budget, market analysis, and project sponsor’s experience in providing the requested assistance to households.

(ii) Operational feasibility of rental projects. A rental project must be able to operate in a financially sound manner, in accordance with the Bank’s
(project feasibility guidelines, as projected in the project’s operating pro forma.

(5) Financing costs. The rate of interest, points, fees, and any other charges for all loans that are made for the project in conjunction with the AHP subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(6) Timing of AHP subsidy use. Some or all of the AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for AHP subsidy funding the project.

(7) Counseling costs. AHP subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(8) Refinancing. The project may use AHP subsidies to refinance an existing single-family or multi-family mortgage loan, provided that the refinancing produces equity proceeds and such equity proceeds up to the amount of the AHP subsidy in the project shall be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this paragraph (c).

(9) Retention—(i) Owner-occupied projects. Each AHP-assisted unit in an owner-occupied project is, or is committed to be, subject to a 5-year retention agreement described in §1291.9(a)(7) of this part.

(ii) Rental projects. AHP-assisted rental projects are, or are committed to be, subject to a 15-year retention agreement described in §1291.9(a)(8) of this part.

(10) Project sponsor qualifications—(i) In general. A project’s sponsor must be qualified and able to perform its responsibilities as committed to in the application for AHP subsidy funding the project.

(ii) Revolving loan fund. Pursuant to written policies adopted by a Bank’s board of directors, a revolving loan fund sponsor that intends to use AHP direct subsidy in accordance with §1291.5(c)(13) of this part shall:

(A) Provide audited financial statements that its operations are consistent with sound business practices; and

(B) Demonstrate the ability to redblend AHP subsidy repayments on a timely basis and track the use of the AHP subsidy.

(iii) Loan pool. Pursuant to written policies adopted by a Bank’s board of directors, a loan pool sponsor that intends to use AHP subsidy in accordance with §1291.5(c)(14) of this part shall:

(A) Provide evidence of sound asset/liability management practices;

(B) Provide audited financial statements that its operations are consistent with sound business practices; and

(C) Demonstrate the ability to track the use of the AHP subsidy.

(11) Fair housing. The project, as proposed, must comply with applicable federal and state laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969, and must demonstrate how the project will be affirmatively marketed.

(12) Calculation of AHP subsidy. (i) Where an AHP direct subsidy is provided to a project to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the net present value of the interest foregone from making the loan below the lender’s market interest rate shall be calculated as of the date the application for AHP subsidy is submitted to the Bank, and subject to adjustment under paragraph (g)(4) of this section.

(ii) Where an AHP subsidized advance is provided to a project, the net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank’s cost of funds shall be determined as of the earlier of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first
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manages the funding to support the subsidized advance through its asset/liability management system, or otherwise.

(13) Lending and re-lending of AHP direct subsidy by revolving loan funds. Pursuant to written policies established by a Bank’s board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP direct subsidy under its competitive application program for eligible projects and households involving both the lending of the subsidy and subsequent lending of subsidy principal and interest repayments by a revolving loan fund, provided the following requirements are met:

(i) Submission of application. (A) An application for AHP subsidy under this paragraph (c)(13) shall include the revolving loan fund’s criteria for the initial lending of the subsidy, identification of and information on a specific proposed AHP project if required in the Bank’s discretion, the revolving loan fund’s criteria for subsequent lending of subsidy principal and interest repayments, and any other information required by the Bank.

(B) The information in the application shall be sufficient for the Bank to:

(1) Determine that the criteria for the initial lending of the subsidy, the specific proposed project if applicable, and the criteria for subsequent lending of subsidy principal and interest repayments, meet the eligibility requirements of this section; and

(2) Evaluate the criteria for the initial lending of the subsidy, and the specific proposed project if applicable, pursuant to the scoring guidelines established by the Bank pursuant to paragraph (d) of this section.

(ii) Review of application. A Bank shall review the application for AHP subsidy to determine that the criteria for the initial lending of the subsidy, the specific proposed project if applicable, and the criteria for subsequent lending of subsidy principal and interest repayments, meet the eligibility requirements of paragraph (c) of this section, and shall evaluate the criteria for the initial lending of the subsidy and the specific proposed project, if applicable, pursuant to the scoring guidelines established by the Bank pursuant to paragraph (d) of this section.

(iii) Initial lending of subsidy. (A) The revolving loan fund’s initial lending of the AHP subsidy shall meet the eligibility requirements of this paragraph (c), shall be to projects or households meeting the commitments in the approved application for AHP subsidy, and shall be subject to the requirements of §§1291.7(a) and 1291.9 of this part, respectively.

(B) If a project or owner-occupied unit funded under this paragraph (c)(13)(iii) is in noncompliance with the commitments in the approved AHP application, or is sold or refinanced prior to the end of the applicable AHP retention period, the required amount of AHP subsidy shall be repaid to the revolving loan fund in accordance with §§1291.8 and 1291.9 of this part, and the revolving loan fund shall re-lend such repaid subsidy, excluding the amounts of AHP subsidy principal already repaid to the revolving loan fund, to another project or owner-occupied unit meeting the initial lending requirements of this paragraph (c)(13)(iii) for the remainder of the retention period.

(iv) Subsequent lending of AHP subsidy principal and interest repayments. (A) AHP subsidy principal and interest repayments received by the revolving loan fund from the initial lending of the AHP direct subsidy shall be re-lent by the revolving loan fund in accordance with the requirements of this paragraph (c)(13)(iv), except that the revolving loan fund, in its discretion, may provide part or all of such repayments as nonrepayable grants to eligible projects in accordance with the requirements of this paragraph (c)(13)(iv).

(B) The revolving loan fund’s subsequent lending of AHP subsidy principal and interest repayments shall be for the purchase, construction, or rehabilitation of owner-occupied projects for households with incomes at or below 80 percent of the median income for the area, or of rental projects where at least 20 percent of the units are occupied by and affordable for households with incomes at or below 50 percent of the median income for the area, and shall meet all other eligibility requirements of this paragraph (c).
(C) A Bank may, in its discretion, require the revolving loan fund’s subsequent lending of subsidy principal and interest repayments to be subject to retention period, monitoring, and recapture requirements as defined by the Bank in its AHP Implementation Plan.

(v) Return of unused AHP subsidy. The revolving loan fund shall return to the Bank any AHP subsidy that will not be used according to the requirements in this paragraph (c)(13).

(14) Use of AHP subsidy in loan pools. Pursuant to written policies established by a Bank’s board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP subsidy under its competitive application program for the origination of first mortgage or rehabilitation loans with subsidized interest rates to AHP-eligible households through a purchase commitment by an entity that will purchase and pool the loans, provided the following requirements are met:

(i) Eligibility requirements. The loan pool sponsor’s use of the AHP subsidies shall meet the requirements under this paragraph (c)(14), and shall not be used for the purpose of providing liquidity to the originator or holder of the loans, or paying the loan pool’s operating or secondary market transaction costs.

(ii) Forward commitment. (A) The loan pool sponsor shall purchase the loans pursuant to a forward commitment that identifies the loans to be originated with interest-rate reductions as specified in the approved application for AHP subsidy to households with income at or below 80 percent of the median income for the area. Both initial purchases of loans for the AHP loan pool and subsequent purchases of loans to substitute for repaid loans in the pool shall be made pursuant to the terms of such forward commitment and subject to time limits on the use of the AHP subsidy as specified by the Bank in its AHP Implementation Plan and the Bank’s agreement with the loan pool sponsor, which shall not exceed 1 year from the date of approval of the AHP application. As an alternative to using a forward commitment, the loan pool sponsor may purchase an initial round of loans that were not originated pursuant to an AHP-specific forward commitment, provided that the entities from which the loans were purchased are required to use the proceeds from the initial loan purchases within time limits on the use of the AHP subsidy as specified by the Bank in its AHP Implementation Plan and the Bank’s agreement with the loan pool sponsor, which shall not exceed 1 year from the date of approval of the AHP application. The proceeds shall be used by such entities to assist households that are income-eligible under the approved AHP application during subsequent rounds of lending, and such assistance shall be provided in the form of a below-market AHP-subsidized interest rate as specified in the approved AHP application.

(iii) Each AHP-assisted owner-occupied unit and rental project receiving AHP direct subsidy or a subsidized advance shall be subject to the requirements of §1291.7(a), 1291.8, and 1291.9, respectively, of this part.

(iv) Where AHP direct subsidy is being used to buy down the interest rate of a loan or loans from a member or other party, the loan pool sponsor shall use the full amount of the AHP direct subsidy to buy down the interest rate on a permanent basis at the time of closing on such loan or loans.

(15) Optional District eligibility requirements. A Bank may require a project receiving AHP subsidies to meet one or more of the following additional eligibility requirements adopted by the Bank’s board of directors and included in its AHP Implementation Plan after consultation with its Advisory Council:

(i) AHP subsidy limits. A requirement that the amount of AHP subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member each year, or per member, per project, or per project unit in a single funding period.

(ii) Homebuyer or homeowner counseling. A requirement that a household must complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively.
(16) **Prohibited uses of AHP subsidies.** The project shall not use AHP subsidies to pay for:

(i) **Certain prepayment fees.** Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid, unless:

(A) The project is in financial distress that cannot be remedied through a project modification pursuant to §1291.5(f) of this part;

(B) The prepayment of the subsidized advance is necessary to retain the project’s affordability and income targeting commitments;

(C) Subsequent to such prepayment, the project will continue to comply with the terms of the approved AHP application and the requirements of this part for the duration of the original retention period;

(D) Any unused AHP subsidy is returned to the Bank and made available for other AHP projects; and

(E) The amount of AHP subsidy used for the prepayment fee may not exceed the amount of the member’s prepayment fee to the Bank.

(ii) **Cancellation fees.** Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled.

(iii) **Processing fees.** Processing fees charged by members for providing AHP direct subsidies to a project.

(d) **Scoring of applications—(1) In general.** A Bank shall establish written scoring guidelines setting forth the Bank’s AHP competitive application program scoring criteria and related definitions and point allocations, and implementing other applicable requirements pursuant to this paragraph (d).

A Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under this paragraph (d).

(2) **Point allocations.** (i) A Bank shall allocate 100 points among the 9 scoring criteria identified in paragraph (d)(5) of this section.

(ii) The scoring criterion for targeting identified in paragraph (d)(5)(ii) of this section shall be allocated at least 20 points.

(iii) The remaining scoring criteria shall be allocated at least 5 points each.

(3) **Fixed point and variable point scoring criteria.** A Bank shall designate each scoring criterion as either a fixed-point or a variable-point criterion, defined as follows:

(i) Fixed-point scoring criteria are those which cannot be satisfied in varying degrees and are either satisfied or not, with the total number of points allocated to the criterion awarded by the Bank to an application meeting the criterion; and

(ii) Variable-point criteria are those where there are varying degrees to which an application can satisfy the criteria, with the number of points that may be awarded to an application for meeting the criterion varying, depending on the extent to which the application satisfies the criterion, based on a fixed scale or on a scale relative to the other applications being scored. A Bank shall designate the targeting and subsidy-per-unit scoring criteria identified in paragraphs (d)(5)(i) and (d)(5)(viii), respectively, of this section, as variable-point criteria.

(4) **Satisfaction of scoring criteria.** A Bank shall award scoring points to applications for proposed projects based on satisfaction of the scoring criteria adopted by the Bank pursuant to paragraph (d)(5) of this section.

(5) **Scoring criteria.** An application for a proposed project may receive scoring points based on satisfaction of the following 9 scoring criteria:

(i) **Use of donated or conveyed government-owned or other properties.** Financing of housing using a significant proportion, as defined by the Bank in its AHP Implementation Plan, of:

(A) Land or units donated or conveyed by the federal government or any agency or instrumentality thereof; or

(B) Land or units donated or conveyed by any other party for an amount significantly below the fair market value of the property, as defined by the Bank in its AHP Implementation Plan.

(ii) **Sponsorship by a not-for-profit organization or government entity.** Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native
Village, or the government entity for Native Hawaiian Home Lands.

(iii) Targeting. The extent to which a project provides housing for very low- and low- or moderate-income households, as follows:

(A) Rental projects. An application for a rental project shall be awarded the maximum number of points available under this scoring criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area.

(B) Owner-occupied projects. Applications for owner-occupied projects shall be awarded points based on a declining scale to be determined by the Bank in its AHP Implementation Plan, taking into consideration percentages of units and targeted income levels.

(C) Separate scoring. For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(iv) Housing for homeless households. The financing of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of 6 months occupancy, or the creation of permanent owner-occupied housing reserved at least 20 percent of the units for homeless households, with the term “homeless households” as defined by the Bank in its AHP Implementation Plan.

(v) Promotion of empowerment. The provision of housing in combination with a program offering: employment; education; training; homebuyer, homeownership, or tenant counseling; daycare services; resident involvement in decision making affecting the creation or operation of the project; or other services that assist residents to move toward better economic opportunities, such as welfare to work initiatives.

(vi) First District priority. The satisfaction of one of the following criteria, or one of a number of the following criteria, adopted by the Bank and set forth in the Bank’s AHP Implementation Plan, as long as the total points available for meeting the criterion or criteria adopted under this category do not exceed the total points allocated to this category:

(A) Special needs. The financing of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing;

(B) Community development. The financing of housing meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of a state or local government;

(C) First-time homebuyers. The financing of housing for first-time homebuyers;

(D) Member financial participation. Member financial participation (excluding the pass-through of AHP subsidy) in the project, such as providing market rate or concessionary financing, fee waivers, or donations;

(E) Disaster areas and displaced households. The financing of housing located in federally declared disaster areas, or for households displaced from federally declared disaster areas due to a disaster;

(F) Rural. The financing of housing located in rural areas;

(G) Urban. The financing of urban infill or urban rehabilitation housing;

(H) Economic diversity. The financing of housing that is part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with
housing opportunities in neighborhoods or cities where the median income equals or exceeds the median income for the larger surrounding area, such as the city, county, or Primary Metropolitan Statistical Area, in which the neighborhood or city is located:

(I) Fair housing remedy. The financing of housing as part of a remedy undertaken by a jurisdiction adjudicated by a Federal, State, or local court to be in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Fair Housing Act (42 U.S.C. 3601 et seq.), or any other Federal, State, or local fair housing law, or as part of a settlement of such claims;

(J) Community involvement. Demonstrated support for the project by local government, other than as a project sponsor, in the form of property tax deferment or abatement, zoning changes or variances, infrastructure improvements, fee waivers, or other similar forms of non-cash assistance, or demonstrated support for the project by community organizations or individuals, other than as project sponsors, through the commitment by such entities or individuals of donated goods and services, or volunteer labor;

(K) Lender consortia. The involvement of financing by a consortium of at least 2 financial institutions; or

(L) In-District projects. The financing of housing located in the Bank’s District.

(vii) Second District priority: Defined housing needs in the District. The satisfaction of one or more housing needs in the Bank’s District, as defined by the Bank in its AHP Implementation Plan. The Bank may, but is not required to, use one of the criteria listed in paragraph (d)(5)(vi) of this section, provided it is different from the criterion or criteria adopted by the Bank under such paragraph.

(viii) AHP subsidy per unit—(A) Amount of subsidy. The extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. In the case of an application for a project financed by a subsidized advance, the total amount of AHP subsidy used by the project shall be estimated based on the Bank’s cost of funds as of the date on which all applications are due for the funding period in which the application is submitted.

(B) Separate scoring. For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(ix) Community stability. The promotion of community stability, such as by rehabilitating vacant or abandoned properties, being an integral part of a neighborhood stabilization plan approved by a unit of state or local government, and not displacing low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement.

(e) Approval of AHP applications. (1) A Bank shall approve applications for AHP subsidy in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated.

(2) The Bank also shall approve at least the next 4 highest scoring applications as alternates and, within 1 year of approval, may fund such alternates if any previously committed AHP subsidies become available.

(f) Modifications of approved AHP applications—(1) Modification procedure. If, prior to or after final disbursement of funds to a project from all funding sources, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time, a Bank, in its discretion, may approve in writing a modification to the terms of the approved application, provided that:

(i) The project, incorporating any such changes, would meet the eligibility requirements of paragraph (c) of this section;

(ii) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank; and
(iii) There is good cause for the modification, and the analysis and justification for the modification are documented by the Bank in writing.

(2) AHP subsidy increases; no delegation. Modifications involving an increase in AHP subsidy shall be approved or disapproved by a Bank’s board of directors. The authority to approve or disapprove such requests shall not be delegated to Bank officers or other Bank employees.

(g) Procedure for funding—(1) Disbursement of AHP subsidies to members. (i) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

(ii) If an institution with an approved application for AHP subsidy loses its membership in a Bank, the Bank may disburse AHP subsidies to a member of such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP subsidies through another Bank to a member of that Bank that has assumed the institution’s obligations under the approved AHP application.

(2) Progress towards use of AHP subsidy. A Bank shall establish and implement policies, including time limits, for determining whether progress is being made towards draw-down and use of AHP subsidies by approved projects, and whether to cancel AHP application approvals for lack of such progress. If a Bank cancels any AHP application approvals due to lack of such progress, the Bank shall make the AHP subsidies available for other AHP-eligible projects.

(3) Compliance upon disbursement of AHP subsidies. A Bank shall establish and implement policies for determining, prior to its initial disbursement of AHP subsidies for an approved project, and prior to each subsequent disbursement if the need for AHP subsidy has changed, that the project meets the eligibility requirements of paragraph (c) of this section and all obligations committed to in the approved AHP application. If a Bank cancels any AHP application approvals due to non-compliance with eligibility requirements of paragraph (c) of this section, the Bank shall make the AHP subsidies available for other AHP-eligible projects.

(4) Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan. If a member is approved to receive AHP direct subsidy to write down prior to closing the principal amount or the interest rate on a loan, and the amount of AHP subsidy required to maintain the debt service cost for the loan decreases from the amount of AHP subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the AHP subsidy amount accordingly. If market interest rates rise between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank, in its discretion, may increase the AHP subsidy amount accordingly.

(5) AHP outlay adjustment. If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank’s AHP fund. If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank’s required AHP contribution for the next year.

(6) Project sponsor notification of reuse of repaid AHP direct subsidy. Prior to disbursement by a project sponsor of AHP direct subsidy repaid to and retained by such project sponsor pursuant to a subsidy re-use program authorized by the Bank under §1291.8(f)(2) of this part, the project sponsor shall provide written notice to the member and the Bank of its intent to disburse the repaid AHP subsidy to a household satisfying the requirements of this part and the commitments made in the approved AHP application.

(h) Bank board duties and delegation—(1) Duties. A Bank’s board of directors, after consultation with its Advisory Council, shall be responsible for:

(i) Adoption of the AHP Implementation Plan required pursuant to §1291.3 of this part; and
§ 1291.6 Homeownership set-aside programs.

(a) Establishment of program. A Bank may establish one or more homeownership set-aside programs pursuant to the requirements of this part.

(b) Eligible applicants. A Bank shall accept applications for AHP direct subsidy under its homeownership set-aside programs only from institutions that are members of the Bank at the time the application is submitted to the Bank.

(c) Minimum eligibility requirements. A Bank’s homeownership set-aside programs shall meet the following eligibility requirements:

(1) Member allocation criteria. AHP direct subsidies shall be provided to members pursuant to allocation criteria established by the Bank in its AHP Implementation Plan.

(2) Eligible households. Members shall provide AHP direct subsidies only to households that:

(i) Have incomes at or below 80 percent of the median income for the area at the time the household is accepted for enrollment by the member in the Bank’s homeownership set-aside program, with such time of enrollment by the member defined by the Bank in its AHP Implementation Plan;

(ii) Complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization experienced in homebuyer or homeowner counseling, in the case of households that are first-time homebuyers; and

(iii) Are first-time homebuyers, in the case of households receiving funds pursuant to the first-time homebuyer requirement in §1291.2(b)(2) of this part, and meet such other eligibility criteria that may be established by the Bank in its AHP Implementation Plan, such as a matching funds requirement, homebuyer or homeowner counseling requirement for households that are not first-time homebuyers, or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort.

(3) Maximum grant amount. Members shall provide AHP direct subsidies to households as a grant, in an amount up to a maximum of $15,000 per household, as established by the Bank in its AHP Implementation Plan, which limit shall apply to all households.

(4) Eligible uses of AHP direct subsidy. Households shall use the AHP direct subsidies to pay for down payment, closing cost, counseling, or rehabilitation assistance in connection with the household’s purchase or rehabilitation of an owner-occupied unit, including a condominium or cooperative housing unit or manufactured housing, to be used as the household’s primary residence.

(5) Retention agreement. An owner-occupied unit purchased or rehabilitated using AHP direct subsidy shall be subject to a 5-year retention agreement described in §1291.9(a)(7) of this part.

(6) Financial or other concessions. The Bank may, in its discretion, require members and other lenders to provide financial or other concessions, as defined by the Bank in its AHP Implementation Plan, to households in connection with providing the AHP direct subsidy or financing to the household.

(7) Financing costs. The rate of interest, points, fees, and any other charges for all loans made in conjunction with the AHP direct subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(8) Counseling costs. The AHP direct subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(9) Cash back to household. A member may provide cash back to a household at closing on the mortgage loan in an
amount not exceeding $250, as determined by the Bank in its AHP Implementation Plan, and a member shall use any AHP direct subsidy exceeding such amount that is beyond what is needed at closing for closing costs and the approved mortgage amount as a credit to reduce the principal of the mortgage loan or as a credit toward the household’s monthly payments on the mortgage loan.

(d) Approval of AHP applications. A Bank shall approve applications for AHP direct subsidy in accordance with the Bank’s criteria governing the allocation of funds.

(e) Procedure for funding—(1) Disbursement of AHP direct subsidies to members. (i) A Bank may disburse AHP direct subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies. (ii) If an institution with an approved application for AHP direct subsidy loses its membership in a Bank, the Bank may disburse AHP direct subsidies to a member of such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP direct subsidies through another Bank to a member of that Bank that has assumed the institution’s obligations under the approved AHP application.

(2) Reservation of homeownership set-aside subsidies. A Bank shall establish and implement policies for reservation of homeownership set-aside subsidies for households enrolled in the Bank’s homeownership set-aside program. The policies shall provide that set-aside subsidies be reserved no more than 2 years in advance of the Bank’s time limit in its AHP Implementation Plan for draw-down and use of the subsidies by the household and the reservation of subsidies be made from the set-aside allocation of the year in which the Bank makes the reservation.

(3) Progress towards use of AHP direct subsidy. A Bank shall establish and implement policies, including time limits, for determining whether progress is being made towards draw-down and use of the AHP direct subsidies by eligible households, and whether to cancel AHP application approvals for lack of such progress. If a Bank cancels any AHP application approvals due to lack of such progress, it shall make the AHP direct subsidies available for other applicants for AHP direct subsidies under the homeownership set-aside program or for other AHP-eligible projects.

(f) Mortgage refinancing program—(1) General. A Bank may establish a homeownership set-aside program for the use of AHP direct subsidy by its members to assist in the refinancing of a household’s mortgage loan, provided such program meets the requirements of this paragraph (f) and otherwise meets the requirements of regulations in this part. The provisions of paragraphs (c)(2)(i), (c)(2)(ii), (c)(4), (c)(6) and (c)(8) of this section, shall not apply to such program.

(2) Eligible loans. A loan is eligible to be refinanced with AHP direct subsidy if the loan is secured by a first mortgage on an owner-occupied unit that is the primary residence of the household, and the loan is refinanced under an eligible targeted refinancing program.

(3) Eligible uses of AHP direct subsidy. Members may provide the AHP direct subsidy to:

(i) Reduce the outstanding principal balance of the loan by no more than the amount necessary for the new loan to qualify under both the maximum loan-to-value ratio and the maximum household mortgage debt-to-income ratio required by the eligible targeted refinancing program;

(ii) Pay loan closing costs; or

(iii) Pay for counseling costs only where:

(A) Such costs, including the cost of the homeowner’s credit report, are incurred in connection with counseling of homeowners that actually refinance their homes with AHP assistance under the AHP set-aside refinancing program; and

(B) The cost of the counseling has not been covered by another source including the counseling organization, a funding source, or the member.

(4) Eligible lender participants. A Bank, in its discretion, may require that a household obtain its refinancing loan through a member participating in an eligible targeted refinancing program.

(5) Counseling. (i) Except as provided in paragraph (f)(5)(ii) of this section, prior to enrollment in an AHP set-
§ 1291.7 Monitoring.

(a) Competitive application program—(1) Initial monitoring policies for owner-occupied and rental projects—(i)—Adoption and implementation. Pursuant to written policies established by a Bank, the Bank shall monitor each AHP owner-occupied and rental project under its competitive application program prior to, and within a reasonable period of time after, project completion to determine, at a minimum, whether:

(A) The project is making satisfactory progress towards completion, in compliance with the commitments made in the approved AHP application, Bank policies, and the requirements of this part;

(B) Following completion of the project, satisfactory progress is being made towards occupancy of the project by eligible households; and

(C) Within a reasonable period of time after project completion, the project meets the following requirements, at a minimum:

(1) The AHP subsidies were used for eligible purposes according to the commitments made in the approved AHP application;

(2) The household incomes and rents comply with the income targeting and rent commitments made in the approved AHP application;

(3) The project’s actual costs were reasonable in accordance with the Bank’s project cost guidelines, and the AHP subsidies were necessary for the completion of the project as currently structured;

(4) Each AHP-assisted unit of an owner-occupied project and rental project is subject to AHP retention agreements that meet the requirements of §1291.9(a)(7) or (a)(8), respectively, of this part; and

(5) The services and activities committed to in the approved AHP application have been provided in connection with the project.

(b) Competitive application program—(i) Back-up and other project documentation. The Bank’s written monitoring policies shall include requirements for:

(A) Bank review of back-up project documentation regarding household incomes and rents maintained by the project sponsor or owner; and

(B) Maintenance and Bank review of other project documentation in the Bank’s discretion.

(iii) Sampling plan. The Bank shall not use a sampling plan to select the projects to be monitored under this paragraph (a)(1), but may use a reasonable risk-based sampling plan to review the back-up project documentation.
(2) Reliance on long-term tax credit monitoring for rental projects. For completed AHP rental projects that have been allocated federal Low-Income Housing Tax Credits (tax credits), a Bank may, in its discretion, for purposes of long-term AHP monitoring under its competitive application program, rely on the monitoring by the state-designated housing credit agency administering the tax credits of the income targeting and rent requirements applicable under the Low-Income Housing Tax Credit Program, and the Bank need not obtain and review reports from such agency or otherwise monitor the projects’ long-term AHP compliance.

(3) Reliance on other long-term governmental monitoring for rental projects. For completed AHP rental projects that received funds other than tax credits from federal, state, or local government entities, a Bank may, in its discretion, for purposes of long-term AHP monitoring under its competitive application program, rely on the monitoring by such entities of the income targeting and rent requirements applicable under their programs, provided that the Bank can show that:

(i) The compliance profiles regarding income targeting, rent, and retention period requirements of the AHP and the other programs are substantively equivalent;

(ii) The entity has demonstrated and continues to demonstrate its ability to monitor the project;

(iii) The entity agrees to provide reports to the Bank on the project’s incomes and rents for the full 15-year AHP retention period; and

(iv) The Bank reviews the reports from the monitoring entity to confirm that they comply with the Bank’s monitoring policies.

(4) Long-term monitoring policies for rental projects—(i) Adoption and implementation. In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraphs (a)(2) or (a)(3) of this section, pursuant to written policies established by the Bank, the Bank shall monitor completed AHP rental projects under its competitive application program, commencing in the second year after project completion to determine, at a minimum, whether during the full 15-year retention period, the household incomes and rents comply with the income targeting and rent commitments, respectively, made in the approved AHP applications.

(ii) Annual project owner certifications; backup and other project documentation. A Bank’s written monitoring policies shall include requirements for:

(A) Bank review of annual certifications by project owners to the Bank that household incomes and rents are in compliance with the commitments made in the approved AHP application;

(B) Bank review of back-up project documentation regarding household incomes and rents maintained by the project owner; and

(C) Maintenance and Bank review of other project documentation in the Banks’ discretion.

(iii) Risk factors and other monitoring—(A) Risk factors; other monitoring. A Bank’s written monitoring policies shall take into account risk factors such as the amount of AHP subsidy in the project, type of project, size of project, location of project, sponsor experience, and any monitoring of the project provided by a federal, state, or local government entity.

(B) Risk-based sampling plan. A Bank may use a reasonable, risk-based sampling plan to select the rental projects to be monitored under this paragraph (a)(4), and to review the annual project owner certifications, back-up, and any other project documentation. The risk-based sampling plan and its basis shall be in writing.

(5) Annual adjustment of targeting commitments. For purposes of determining compliance with the targeting commitments in an approved AHP application for both initial and long-term AHP monitoring purposes under a Bank’s competitive application program, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged to a household remains affordable, as defined in §1291.1 of this part, for the household occupying the unit.
§ 1291.8 Remedial actions for non-compliance.

(a) Recovery of AHP subsidies. A Bank shall recover the amount of any AHP subsidies (plus interest, if appropriate) that are not used in compliance with the commitments made in the approved application for AHP subsidy and the requirements of this part, if the misuse is the result of the actions or omissions of the member, the project sponsor, or the project owner.

(b) Responsible party for repayment of AHP subsidies. Except as provided in paragraph (c) of this section:

(1) If the member causes the AHP subsidies to be misused through its actions or omissions, the member shall repay the AHP subsidies to the Bank.

(2) If the project sponsor or owner causes the AHP subsidies to be misused through its actions or omissions, the following shall apply, as determined by the Bank in its discretion:

(i) The member shall recover the AHP subsidies from the project sponsor or owner and repay them to the Bank; or

(ii) The project sponsor or owner shall repay the AHP subsidies directly to the Bank.

(c) Recovery not required. Recovery of the AHP subsidies is not required if:

(1) The member, project sponsor, or project owner cures the noncompliance within a reasonable period of time;

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the approved application for AHP subsidy pursuant to §1291.5(f) of this part; or

(3) The member is unable to collect the AHP subsidy after making reasonable efforts to collect it.

(d) Settlements. A Bank may settle a claim for AHP subsidies that it has against a member, project sponsor, or project owner for less than the full amount due. If a Bank enters into such a settlement, the FHFA may require the Bank to reimburse its AHP fund in the amount of any shortfall under paragraph (e)(2) of this section, unless:

(1) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the non-complying parties and the extent of the Bank's recovery efforts); or

(2) The Bank obtains a determination from the FHFA that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts
and circumstances of the noncompliance (including the degree of culpability of the non-complying parties and the extent of the Bank’s recovery efforts).

(e) Reimbursement of AHP fund—(1) By the Bank. A Bank shall reimburse its AHP fund in the amount of any AHP subsidies (plus interest, if appropriate) misused as a result of the actions or omissions of the Bank.

(2) By FHFA order. The FHFA may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) The Bank has failed to reimburse its AHP fund as required under paragraph (e)(1) of this section; or

(ii) The Bank has failed to recover AHP subsidy from a member, project sponsor, or project owner pursuant to the requirements of paragraph (a) of this section, and has not shown that such failure is reasonably justified, considering factors such as the extent of the Bank’s recovery efforts.

(f) Use of repaid AHP subsidies—(1) Use of repaid AHP subsidies in other AHP-eligible projects. Except as provided in paragraph (f)(2) of this section, amounts of AHP subsidy, including any interest, repaid to a Bank pursuant to this part shall be made available by the Bank for other AHP-eligible projects.

(2) Re-use of repaid AHP direct subsidies in same project—(i) Requirements. AHP direct subsidy, including any interest, repaid to a member or project sponsor under a homeownership set-aside program or the competitive application program, respectively, may be repaid by such parties to the Bank for subsequent disbursement to and re-use by such parties, or retained by such parties for subsequent re-use, as authorized by the Bank, in its discretion, after consultation with its Advisory Council, in its AHP Implementation Plan, provided all of the following requirements are satisfied:

(A) The member or the project sponsor originally provided the AHP direct subsidy as down payment, closing cost, rehabilitation, or interest rate buy down assistance to an eligible household to purchase or rehabilitate an owner-occupied unit pursuant to an approved AHP application;

(B) The AHP direct subsidy, including any interest, was repaid to the member or project sponsor as a result of a sale by the household of the unit prior to the end of the retention period to a purchaser that is not a low-or moderate-income household; and

(C) The repaid AHP direct subsidy is made available by the member or project sponsor, within the period of time specified by the Bank in its AHP Implementation Plan, to another AHP-eligible household to purchase or rehabilitate an owner-occupied unit in the same project in accordance with the terms of the approved AHP application.

(ii) No delegation. A Bank’s board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt any Bank policies on re-use of repaid AHP direct subsidies in the same project pursuant to paragraph (f)(2)(i) of this section.

(g) Suspension and debarment—(1) At a Bank’s initiative. A Bank may suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(2) At the FHFA’s initiative. The FHFA may order a Bank to suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(b) Transfer of Program administration. Without limitation on other remedies, the FHFA, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank’s annual AHP contribution, for the benefit of the first Bank’s members, under such terms and conditions as the FHFA may prescribe.

(i) FHFA actions under this section. Except as provided in paragraph (d)(2) of this section, actions taken by the FHFA under this section are reviewable under §907.9 of this chapter.
§ 1291.9 Agreements.

(a) Agreements between Banks and members. A Bank shall have in place with each member receiving an AHP subsidized advance or AHP direct subsidy an agreement or agreements containing, at a minimum, the following provisions, where applicable:

(1) Notification of member. The member has been notified of the requirements of this part as they may be amended from time to time, and all Bank policies relevant to the member’s approved application for AHP subsidy.

(2) AHP subsidy pass-through. The member shall pass on the full amount of the AHP subsidy to the project or household, as applicable, for which the subsidy was approved.

(3) Use of AHP subsidy—(i) Use of AHP subsidy by the member. The member shall use the AHP subsidy in accordance with the terms of the member’s approved application for the subsidy and the requirements of this part.

(ii) Use of AHP subsidy by the project sponsor or owner. The member shall have in place an agreement with each project sponsor or project owner in which the project sponsor or project owner agrees to use the AHP subsidy in accordance with the terms of the member’s approved application for the subsidy and the requirements of this part.

(4) Repayment of AHP subsidies in case of noncompliance—(i) Noncompliance by the member. The member shall repay AHP subsidies to the Bank in accordance with the requirements of §1291.8(b)(1) of this part.

(ii) Noncompliance by a project sponsor or owner—(A) Agreement. The member shall have in place an agreement with each project sponsor or project owner in which the project sponsor or project owner agrees to use the AHP subsidy to the member or the Bank in accordance with the requirements of §1291.8(b)(2)(i) or (b)(2)(ii) of this part, respectively (as applicable).

(B) Recovery of AHP subsidies. The member shall recover from the project sponsor or project owner and repay to the Bank any AHP subsidy in accordance with the requirements of §1291.8(b)(2)(i) of this part (if applicable).

(5) Project monitoring—(i) Monitoring by the member. The member shall comply with the monitoring requirements applicable to it, as established by the Bank in its monitoring policies pursuant to §1291.7 of this part.

(ii) Agreement. The member shall have in place an agreement with each project sponsor and project owner, in which the project sponsor and project owner agree to comply with the monitoring requirements applicable to such parties, as established by the Bank in its monitoring policies pursuant to §1291.7 of this part.

(6) Transfer of AHP obligations—(i) To another member. The member shall make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank’s final disbursement of AHP subsidies.

(ii) To a nonmember. If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member’s obligations under its approved application for AHP subsidy, and where the member received an AHP subsidized advance, the nonmember assumes such obligations until prepayment or orderly liquidation by the nonmember of the subsidized advance.

(7) Retention agreements for owner-occupied units. The member shall ensure that an AHP-assisted owner-occupied unit is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale or refinancing of the unit prior to the end of the retention period, an amount equal to a pro rata share of the AHP subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale or refinancing, unless:
(A) The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;

(B) The unit is sold to a very low-, or low- or moderate-income household; or

(C) Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (a)(7); and

(iii) In the case of a direct subsidy, such repayment of AHP subsidy shall be made:

(A) To the Bank. If the Bank has not authorized re-use of the repaid AHP subsidy or has authorized re-use of the repaid subsidy but not retention of such repaid subsidy by the member or project sponsor pursuant to §1291.8(f)(2) of this part, or has authorized retention and re-use of such repaid subsidy by the member or project sponsor pursuant to such section and the repaid subsidy is not re-used in accordance with the requirements of the Bank and such section; or

(B) To the member or project sponsor.

To the member or project sponsor for reuse by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to §1291.8(f)(2); and

(iv) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(8) Retention agreements for rental projects. The member shall ensure that an AHP-assisted rental project is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project’s rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the approved AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, the full amount of the AHP subsidy received by the owner shall be repaid to the Bank, unless:

(A) The project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the duration of the retention period; or

(B) If authorized by the Bank, in its discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the remainder of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project shall terminate after any foreclosure.

(9) Lending of AHP direct subsidies. If a member or a project sponsor lends AHP direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank, unless the direct subsidy is being both lent and re-lent by a revolving loan fund pursuant to §1291.5(c)(13) of this part.

(10) Special provisions where members obtain AHP subsidized advances—(i) Repayment schedule. The term of an AHP subsidized advance shall be no longer than the term of the member’s loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(ii) Prepayment fees. Upon a prepayment of an AHP subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(iii) Treatment of loan prepayment by project. If all or a portion of the loan or loans financed by an AHP subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(A) Repay to the Bank that portion of the advance used to make the loan...
or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

(B) Continue to maintain the advance outstanding, subject to the Bank resetting the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(b) Agreements between Banks and project sponsors or owners. A Bank shall have in place an agreement with each project sponsor or project owner, in which the project sponsor or project owner agrees to repay AHP subsidies directly to the Bank in accordance with the requirements of §1291.8(b)(2)(ii) of this part (if applicable).

(c) Application to existing AHP projects and units. The requirements of section 10(j) of the Act (12 U.S.C. 1430(j)) and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, project sponsors, and project owners receiving AHP subsidies under the competitive application program, and between Banks, members and unit owners under the homeownership set-aside program. To the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of actions taken prior to the effective date of such amendment.

§ 1291.10 Conflicts of interest.

(a) Bank directors and employees. (1) Each Bank’s board of directors shall adopt a written policy providing that if a Bank director or employee, or such person’s family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (a)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(2) If a Bank director or employee, or such person’s family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (a)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(b) Advisory Council members. (1) Each Bank’s board of directors shall adopt a written policy providing that if an Advisory Council member, or such person’s family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(2) If an Advisory Council member, or such person’s family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (b)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(c) No delegation. A Bank’s board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt the conflict of interest policies required by this section.

§ 1291.11 Temporary suspension of AHP contributions.

(a) Request to FHFA. If a Bank finds that the contributions required pursuant to §1291.2(a) of this part are contributing to the financial instability of the Bank, the Bank may apply in writing to the FHFA for a temporary suspension of such contributions.

(b) Director review. (1) In determining the financial instability of a Bank, the Director shall consider such factors as:

(i) Severely depressed Bank earnings;
(ii) A substantial decline in Bank membership capital; and
(iii) A substantial reduction in Bank advances outstanding.

(2) Limitations on grounds for suspension. The Director shall not suspend a Bank’s annual AHP contributions if it determines that the Bank’s reduction in earnings is due to:
(i) A change in the terms of advances to members that is not justified by market conditions;
(ii) Inordinate operating and administrative expenses; or
(iii) Mismanagement.


§ 1291.12 Affordable Housing Reserve Fund.

(a) Deposits. If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to §1291.2(a) of this part, 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the FHFA. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion shall be deposited in the Affordable Housing Reserve Fund.

(b) Use or commitment of funds. Approval of applications for AHP subsidies from members sufficient to exhaust the amount a Bank is required to contribute pursuant to §1291.2(a) of this part shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or decommitted from canceled projects, they are insufficient to fund:

(1) The next highest scoring AHP application in the Bank’s final funding period of the year for its competitive application program;
(2) Pending applications for funds under the Bank’s homeownership set-aside programs; and
(3) Project modifications approved by the Bank pursuant to the requirements of this part.

(c) Carryover of insufficient amounts. Such insufficient amounts as described in paragraph (b) of this section shall be carried over for use or commitment in the following year in the Bank’s competitive application program or homeownership set-aside programs.

PART 1292—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

Sec.
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SOURCE: 78 FR 2328, Jan. 11, 2013, unless otherwise noted.

§ 1292.1 Definitions.

As used in this part:
Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of the USDA as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.
CICA program or Community Investment Cash Advance program means:
(1) A Bank’s AHP;
(2) A Bank’s CIP;
(3) A Bank’s RDF program or UDF program using any combination of the targeted beneficiaries and targeted income levels specified in §1292.1 of this part; and
(4) Any other advance or grant program offered by a Bank using targeted beneficiaries and targeted income levels other than those specified in §1292.1 of this part, established by the Bank with the prior approval of FHFA.
Economic development projects means:
(1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and
(2) Public or private infrastructure projects, such as roads, utilities, and sewers.
Family means one or more persons living in the same dwelling unit.
§ 1292.1

Housing projects means projects or activities that involve the purchase, construction, rehabilitation or refinancing (subject to §1292.5(c) of this part) of, or predevelopment financing for:

(1) Individual owner-occupied housing units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(2) Projects involving multiple units of owner-occupied housing in which at least 51% of the units are owned or are intended to be purchased by families with incomes at or below the targeted income level;

(3) Rental housing where at least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(4) Manufactured housing parks where:

(i) At least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(ii) The project is located in a neighborhood with a median income at or below the targeted income level.

Median income for the area—

(1) Owner-occupied housing projects and economic development projects. For purposes of owner-occupied housing projects and economic development projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The median income for the area, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iv) The median income for the area, as published by the USDA; or

(v) The median income for the area obtained from another public entity or a private source and approved by the Director, at the request of a Bank, for use under the Bank’s CICA programs.

(2) Rental housing projects. For purposes of rental housing projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The median income for the area obtained from another public entity or a private source and approved by the Director, at the request of a Bank, for use under the Bank’s CICA programs.

MSA means a Metropolitan Statistical Area as designated by the Office of Management and Budget.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of local government with a population of 25,000 or less;

(3) A rural county; or

(4) A geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Provide financing means:

(1)Originating loans;

(2)Purchasing a participation interest, or providing financing to participate, in a loan consortium for CICA-eligible housing or economic development projects;

(3)Making loans to entities that, in turn, make loans for CICA-eligible housing or economic development projects;

(4)Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities, respectively, meet the eligibility requirements of the CICA program under which the member or housing associate borrower receives funding;

(5)Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the CICA program under which the member or housing associate borrower receives funding;

(6)Originating CICA-eligible loans within 3 months prior to receiving the CICA funding; and
(7) Purchasing low-income housing tax credits.

*RDF* or *Rural Development Funding program* means an advance or grant program offered by a Bank for targeted community lending in rural areas.

*Rural area* means:

1. A unit of general local government with a population of 25,000 or less;
2. An unincorporated area outside an MSA; or
3. An unincorporated area within an MSA that qualifies for housing or economic development assistance from the USDA.

*Small business* means a “small business concern,” as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration under 13 CFR part 121, or any successor provisions.

*Targeted beneficiaries* means beneficiaries determined by the geographical area in which a project is located (Geographically Defined Beneficiaries), by the individuals who benefit from a project as employees or service recipients (Individual Beneficiaries), or by the nature of the project itself (Activity Beneficiaries), as follows:

1. Geographically Defined Beneficiaries:
   - The project is located in a neighborhood with a median income at or below the targeted income level;
   - The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of the USDA;
   - The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD;
   - The project is located in an Indian area, as defined by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), Alaskan Native Village, or Native Hawaiian Home Land;
   - The project is located in an area and involves a property eligible for a Brownfield Tax Credit;
   - The project is located in an area affected by a military base closing and is a “community in the vicinity of the installation” as defined by the Department of Defense at 32 CFR part 176;
   - The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m-2;
   - The project is located in a Federally declared disaster area; or
   - The project is located in a state declared disaster area, or other area that qualifies for assistance under another Federal or State targeted economic development program, approved by FHFA.

2. Individual Beneficiaries:
   - The annual salaries for at least 51% of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; or
   - At least 51% of the families who otherwise benefit from (other than through employment), or are provided services by, the project have incomes at or below the targeted income level.

3. Activity Beneficiaries: Projects that qualify as small businesses.

4. Other Targeted Beneficiaries. A Bank may designate, with the prior approval of FHFA, other targeted beneficiaries for its targeted community lending.

5. Only targeted beneficiaries identified in paragraphs (1)(i) through (1)(iv), and (2)(i) and (2)(ii) of this definition are eligible for CIP advances.

*Targeted community lending* means providing financing for economic development projects for targeted beneficiaries.

*Targeted income level* means:

1. For rural areas, incomes at or below 115 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;
2. For urban areas, incomes at or below 100 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;
3. For advances provided under CIP:
§ 1292.2 Scope.

Section 10(j)(10) of the Bank Act (12 U.S.C. 1430(j)(10)) authorizes the Banks to offer Community Investment Cash Advance (CICA) programs. This part establishes requirements for all CICA programs offered by a Bank, except for a Bank’s Affordable Housing Program (AHP), which is governed specifically by part 1291 of this chapter.

§ 1292.3 Purpose.

The purpose of this part is to identify targeted community lending projects that the Banks may support through the establishment of CICA programs under section 10(j)(10) of the Bank Act (12 U.S.C. 1430(j)(10)). Pursuant to this part, a Bank may offer RDF or UDF programs, or both, for targeted community lending using the targeted beneficiaries or targeted income levels specified in §1292.1, without prior FHFA approval. A Bank also may offer other CICA programs for targeted community lending using targeted beneficiaries and targeted income levels other than those specified in §1292.1, established by the Bank with the prior approval of FHFA. In addition, a Bank shall offer CICA programs under section 10(i) of the Bank Act (12 U.S.C. 1430(i)) (Community Investment Program (CIP)) and section 10(j) of the Bank Act (12 U.S.C. 1430(j)) (AHP). A Bank may provide advances or grants under its CICA programs except for CIP programs, under which a Bank may only provide advances.

§ 1292.4 Targeted Community Lending Plan.

Each Bank shall develop and adopt an annual Targeted Community Lending Plan pursuant to §1290.6 of this chapter.

§ 1292.5 Community Investment Cash Advance Programs.

(a) In general. (1) Each Bank shall offer an AHP in accordance with part 1291 of this chapter.

(2) Each Bank shall offer a CIP to provide financing for housing projects and for eligible targeted community lending at the appropriate targeted income levels.

(3) Each Bank may offer CICA programs for targeted community lending using targeted beneficiaries and targeted income levels other than those specified in §1292.1 of this part, established by the Bank with the prior approval of FHFA.

(b) Mixed-use projects. (1) For projects funded under CICA programs other than CIP, involving a combination of housing projects and economic development projects, only the economic development components of the project must meet the appropriate targeted income level for the respective CICA program.

(2) For projects funded under CIP, both the housing and economic development components of the project must meet the appropriate targeted income levels.

(c) Refinancing. CICA funding other than AHP may be used to refinance...
economic development projects and housing projects, provided that any equity proceeds of the refinancing of rental housing and manufactured housing parks are used to rehabilitate the projects or to preserve affordability for current residents.

(d) **Pricing and Availability of advances**—(1) **Advances to members.** For CICA programs other than AHP and CIP, a Bank shall price advances to members as provided in §1266.5 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Bank Act. (12 U.S.C. 1430(a)).

(2) **Pricing of CIP advances.** The price of advances made under CIP shall not exceed the Bank’s cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

(3) **Pricing of AHP advances.** A Bank shall price advances made under AHP in accordance with parts 1266 and 1291 of this chapter.

(4) **Advances to housing associate borrowers.** (i) A Bank may offer advances under CICA programs to housing associate borrowers at the Bank’s option, except for AHP and CIP, which are available only to members.

(ii) A Bank shall price advances to housing associate borrowers as provided in §1266.17 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Bank Act. (12 U.S.C. 1430b).

(5) **Pricing pass-through.** A Bank may require that borrowers receiving advances made under CICA programs pass through the benefit of any price reduction from regular advance pricing to their borrowers.

(6) **Discount Fund.** (i) A Bank may establish a Discount Fund which the Bank may use to reduce the price of CIP or other advances made under CICA programs below the advance prices provided for by this part.

(ii) Price reductions made through the Discount Fund shall be made in accordance with a fair distribution scheme.

§ 1292.6 **Reporting.**

(a) Each Bank annually shall provide to FHFA, on or before January 31, a Targeted Community Lending Plan.

(b) Each Bank shall provide such other reports concerning its CICA programs as FHFA may request from time to time.

§ 1292.7 **Documentation.**

(a) A Bank shall require the borrower to certify to the Bank that each project funded under a CICA program (other than AHP) meets the respective targeting requirements of the CICA program. Such certification shall include a description of how the project meets the requirements, and where appropriate, a statistical summary or list of incomes of the borrowers, rents for the project, or salaries of jobs created or retained.

(b) For those CICA-funded projects that also receive funds from another targeted Federal economic development program that has income targeting requirements that are the same as, or more restrictive than, the targeting requirements of the applicable CICA program, the Bank shall permit the borrower to certify that compliance with the criteria of such Federal economic development program will meet the requirements of the respective CICA program.

(c) Such certifications shall satisfy the Bank’s obligations to document compliance with the CICA funding provisions of this part.

**PARTS 1293–1299 [RESERVED]**