Nov. 30, 2023

Title 12

Banks and Banking

Part 1100 to End

Revised as of January 1, 2024

Containing a codification of documents of general applicability and future effect

As of January 1, 2024

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CFR

To cite the regulations in this volume use title, part and section number. Thus,

12 CFR 1101.1

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16

as of January 1

Title 17 through Title 27

as of April 1

Title 28 through Title 41

as of July 1

Title 42 through Title 50

as of October 1

The appropriate revision date is printed on the cover of each volume.

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What is incorporation by reference?

What is a proper incorporation by reference?

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

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Oliver A. Potts,

Director,

Office of the Federal Register

January 1, 2024

THIS TITLE

Title 12

Banks and Banking

For this volume, Michele Bugenhagen was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

12 CFR Ch. IX (1-1-24 Edition)

Federal Financial Institutions Examination Council

Title 12Banks and Banking

(This book contains part 1100 to end)

Part

chapter xi

Federal Financial Institutions Examination Council

CHAPTER XIFEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraiser regulation

12

1103-1199

[Reserved]

PART 1100 [RESERVED]

Pt. 1101

PART 1101DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

Sec.

1101.1

Scope and purpose.

1101.2

Authority and functions.

1101.3

Organization and methods of operation.

1101.4

Disclosure of information, policies, and records.

1101.5

Testimony and production of documents in response to subpoena, order, etc.

Authority:

5 U.S.C. 552; 12 U.S.C. 3307.

Source:

45 FR 46794, July 11, 1980, unless otherwise noted.

§ 1101.1

Scope and purpose.

This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, with respect to the Federal Financial Institutions Examination Council (Council), and establishes related information

disclosure procedures.

§ 1101.2

Authority and functions.

(a) The Council was established by the Federal Financial Institutions Examination Council Act of 1978 (Act), 12 U.S.C. 3301-3308. It is composed of the Comptroller of the Currency; the Chairman of the Federal Deposit Insurance Corporation; a Governor of the Board of Governors of the Federal Reserve System; the Chairman of the Federal Home Loan Bank Board; and the Chairman of the National Credit Union Administration Board.

(b) The statutory functions of the Council are set out at 12 U.S.C. 3305. In summary, the mission of the Council is to promote consistency and progress in federal examination and supervision of financial institutions and their affiliates. The Council is empowered to prescribe uniform principles, standards, and reporting forms and systems; make recommendations in the interest of uniformity; and conduct examiner schools open to personnel of the agencies represented on the Council and employees of state financial institutions supervisory agencies.

§ 1101.3

Organization and methods of operation.

(a) Statutory requirements relating to the Council's organization are stated in 12 U.S.C. 3303.

(b)

Council staff.

(c)

Agency Liaison Group, Task Forces and Legal Advisory Group.

(d)

State Liaison Committee.

(e)

Council address.

[45 FR 46794, July 11, 1980, as amended at 53 FR 7341, Mar. 8, 1988; 75 FR 71014, Nov. 22,

2010]

§ 1101.4

Disclosure of information, policies, and records.

(a)

Statements of policy published in the

Federal Register

or available for public inspection in an electronic format; indices.

Federal Register

(2) Under 5 U.S.C. 552(a)(2), policies and interpretations adopted by the Council, including instructions to Council staff affecting members of the

(3) Copies of all records, regardless of form or format, are available for public inspection in an electronic format if they:

(i) Have been released to any person under paragraph (b) of this section; and

(ii)(A) Because of the nature of their subject matter, the Council determines that they have become or are likely to become the subject of subsequent requests for substantially the same records; or

(B) They have been requested three or more times.

(4) An index of the records referred to in paragraphs (a)(1) through (3) of this section is available for public inspection in an electronic format.

(b)

Other records of the Council available to the public upon request; procedures

General rule and exemptions.

(i) A record, or portion thereof, which is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is, in fact, properly classified pursuant to such Executive Order.

(ii) A record, or portion thereof, relating solely to the internal personnel rules and practices of an agency.

(iii) A record, or portion thereof, specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(iv) A record, or portion thereof, containing trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(v) An intra-agency or interagency memorandum or letter that would not be routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by the personnel of the Council or its constituent agencies, and records of deliberations of the Council and discussions of meetings of the Council, any Council Committee, or Council staff, that are not subject to 5 U.S.C. 552b (the Government in the Sunshine Act). In applying this exemption, the Council will not withhold records based on the deliberative process privilege if the records were created 25 years or more before the date on which the records were requested.

(vi) A personnel, medical, or similar record, including a financial record, or any portion thereof, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(vii) Records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7), including records relating to a proceeding by a financial institution's State or Federal regulatory agency for the issuance of a cease-anddesist order, or order of suspension or removal, or assessment of a civil money penalty and the granting, withholding, or revocation of any approval, permission, or authority.

(viii) A record, or portion thereof, containing, relating to, or derived from an examination, operating, or condition report prepared by, or on behalf of, or for the use of any State or Federal agency directly or indirectly responsible for the regulation or supervision of financial institutions.

(ix) A record, or portion thereof, which contains or is related to geological and geophysical information and data, including maps, concerning wells.

(2)

Discretionary release of exempt information.

(3)

Procedure for records request

Initial request.

(A) By sending a letter to: FFIEC, Attn: Executive Secretary, 3501 Fairfax Drive, Room B-708la, Arlington, VA, 22226-3550. Both the mailing envelope and the request should be marked Freedom of Information Request, FOIA Request, or the like; or

(B) By facsimile clearly marked Freedom of Information Act Request, FOIA Request, or the like to the Executive Secretary at (703) 562-6446; or

(C) By email to the address provided on the FFIEC's World Wide Web page, found at:

http://www.ffiec.gov.

(ii)

Contents of request.

(A) The name and mailing address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(B) A statement as to whether the information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative; and

(C) A statement agreeing to pay all applicable fees, or a statement identifying any desired fee limitation, or a request for a waiver or reduction of fees that satisfies paragraph (b)(5)(ii)(H) of this section.

(iii)

Defective requests.

(iv)

Expedited processing.

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2

(B) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(C) The formality of the certification required to obtain expedited treatment may be waived by the Executive Secretary as a matter of administrative discretion.

(v)

Response to initial requests.

http://www.ffiec.gov/foia.htm.

(B) In response to a request that reasonably describes the records sought and otherwise satisfies the requirements of this section, a search shall be conducted of records in existence and maintained by the Council on the date of receipt of the request, and a review made of any responsive information located. The Executive Secretary shall notify the requester of:

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(vi)

Appeals of responses to initial requests.

(A) By sending a letter to: FFIEC, Attn: Executive Secretary, 3501 Fairfax Drive, Room B-7081a, Arlington, VA, 22226-3550. Both the mailing envelope and the request should be marked Freedom of Information Act Appeal, FOIA Appeal, or the like; or

(B) By facsimile clearly marked Freedom of Information Act Appeal, FOIA Appeal, or the like to the Executive Secretary at (703) 562-6446; or

(C) By email with the subject line marked Freedom of Information Act Appeal, FOIA Appeal, or the like to

FOIA@ffiec.gov.

(vii)

Council response to appeals.

(4)

Procedure for access to records if request is granted.

(ii) When delivery to the requester is to be made, copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the Executive Secretary deems it appropriate to send the documents by another means.

(iii) The Council shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Council in that form or format, but the Council need not provide more than one copy of any record to a requester.

(iv) By arrangement with the requester, the Executive Secretary may elect to send the responsive records electronically if a substantial portion of the records is in electronic format. If the information requested is subject to disclosure under the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be established.

(5)

Fees for document search, review, and duplication; waiver and reduction of fee

Definitions

Direct costs

(B)

Search

(C)

Duplication

e.g.,

(D)

Review

see

(E)

Commercial use request

(F)

Educational institution

(G)

Noncommercial scientific institution

(H)

Representative of the news media

(ii)

Fees to be charged.

(A)

Manual searches and review.

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1

(

2

(B)

Computer searches.

(C)

Duplication of records.

1

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2

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3

(D)

Hourly rates.

(E)

Fees to exceed $25.

(F)

Other services.

(G)

Restriction on assessing fees.

1

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2

i

2

ii

iv

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ii

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iii

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iv

(H)

Waiving or reducing fees.

(iii)

Categories of requesters

Commercial use requester

(B)

News media, educational and noncommercial scientific institution requesters.

(C)

All other requesters.

(D)

Description of records.

(iv)

Interest on unpaid fees.

(v)

Fees for unsuccessful search and review.

(vi)

Aggregating requests.

(vii)

Advance payment of fees.

(A) The Council estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. The Council will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) A requester has previously failed to pay a fee charged in a timely fashion. The Council may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (b)(5)(iv) of this section or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or a pending request from that requester.

(C) When the Council acts under paragraph (b)(5)(vii)(A) or (B) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (

i.e.,

(6)

Records of another agency.

[82 FR 30726, July 3, 2017]

§ 1101.5

Testimony and production of documents in response to subpoena, order, etc.

No person shall testify, in court or otherwise, as a result of activities on behalf of the Council without prior written authorization from the Council. This section shall not restrict the authority of a Council

member to testify before Congress on matters within his or her official responsibilities as a Council member. No person shall furnish documents reflecting information of the Council in compliance with a subpoena, order, or otherwise, without prior written authorization from the Council. The Council may authorize testimony or production of documents after the litigant (or the litigant's attorney) submits an affidavit to the Council setting forth the interest of the litigant and the testimony or documents desired. Authorization to testify or produce documents is limited to authority expressly granted by the Council. When the Council has not authorized testimony or production of documents, the individual to whom the subpoena or order has been directed will appear in court and respectfully state that he or she is unable to comply further with the subpoena or order by reason of this section.

Pt. 1102

PART 1102APPRAISER REGULATION

Subpart ATemporary Waiver Requests

Sec.

12 U.S.C. 3348(a), 3332, 3335, 3338 (a)(4)(B), 3348(c), 5 U.S.C. 552a, 553(e); Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p. 235).

Editorial Note:

Nomenclature changes to part appear at 83 FR 43739, Aug. 28, 2018.

Subpart ATemporary Waiver Requests

Authority:

12 U.S.C. 3348(b).

Source:

87 60875, Oct. 7, 2022, unless otherwise noted.

§ 1102.1

Authority, purpose, and scope.

(a)

Authority.

(b)

Purpose and scope.

§ 1102.2

Definitions.

For purposes of this subpart:

(a)

Federally related transaction (FRT)

(1) A Federal financial institutions regulatory agency engages in, contracts for, or regulates; and

(2) Requires the services of an appraiser under the interagency appraisal rules. ((Title XI, section 1121(4), 12 U.S.C. 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a).)

(b)

Performance of appraisals

(c)

Petition

(d)

Request for Temporary Waiver

(e)

Scarcity of certified or licensed appraisers

(f)

Significant delays in the performance of appraisals

e.g.,

e.g.,

(g)

State Appraisal Agency

see also

(h)

Temporary waiver

Uniform Standards of Professional Appraisal Practice

§ 1102.3

Request for Temporary Waiver.

(a)

Who can file a Request for Temporary Waiver.

(b)

Contents and receipt of a Request for Temporary Waiver.

(1) A written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a

specified class of FRTs within either a portion of, or the entire State;

(2) The requirement(s) of State law from which relief is being sought;

(3) The nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(4) The extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(5) How complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and

(6) Meaningful suggestions and recommendations for remedying the situation.

(c)

Receipt of a Request for Temporary Waiver.

Federal Register

(d)

Deny or refer back.

§ 1102.4

Petition requesting the ASC initiate a temporary waiver proceeding.

(a)

Who can file a Petition requesting the ASC initiate a temporary waiver proceeding.

(b)

Contents of a Petition.

(i) Information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and

(ii) The extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

(2) A Petition may also include meaningful suggestions and recommendations for remedying the

situation.

(c)

Copy of Petition to State Appraisal Agency.

(d)

ASC review of a Petition.

(e)

Deny or refer back.

(f)

Further action on a Petition.

(1) Refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for further evaluation and study, to include items that would be addressed in a Request for Temporary Waiver (see

(2) Take further action without referring the Petition to the State Appraisal Agency.

(g)

State Appraisal Agency action.

(i) Issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State (or request that the ASC issue such a written determination), in which case, the procedures and requirements of §§ 1102.3 and 1102.6(a) shall apply; or

(ii) Recommend that the ASC take no further action.

(2) In the event the State Appraisal Agency either recommends no further action or declines to conduct further evaluation and study on a Petition, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding in accordance with § 1102.5(a).

§ 1102.5

Order initiating a temporary waiver proceeding.

The ASC may exercise discretion in determining whether to issue an Order initiating a temporary waiver proceeding in response to a Petition, or alternatively, the ASC may exercise discretion to initiate a temporary waiver

See, e.g.,

Federal Register

§ 1102.6

Notice and comment.

(a) The ASC shall publish promptly in the

Federal Register

(1) A received Request for Temporary Waiver (

see

(2) An ASC Order initiating a temporary waiver proceeding (

see

(b) The notice of a received Request for Temporary Waiver or ASC Order initiating a temporary waiver proceeding shall contain a concise statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views, and arguments.

§ 1102.7

ASC determination.

(a)

Order by the ASC.

Federal Register,

Federal Register,

see

(b)

Approval by the FFIEC.

§ 1102.8

Waiver extension.

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.6, 1102.7 and 1102.9. A State Appraisal Agency also may seek an extension of temporary waiver relief by forwarding an additional written Request for Temporary Waiver to the ASC. A request for an extension from a State Appraisal Agency shall be subject to all the requirements of this subpart.

§ 1102.9

Waiver termination.

(a)

Mandatory waiver termination.

(b)

Discretionary waiver termination.

(c)

Publication in the

Federal Register.

Federal Register,

Subpart BRules of Practice for Proceedings

Authority:

12 U.S.C. 3332, 3335, 3347, and 3348(c).

Source:

57 FR 31650, July 17, 1992, unless otherwise noted.

§ 1102.20

Authority, purpose, and scope.

(a)

Authority.

(b)

Purpose and scope.

[57 FR 31650, July 17, 1992, as amended at 57 FR 35004, Aug. 7, 1992]

§ 1102.21

Definitions.

As used in this subpart:

(a)

Subcommittee

ASC

(b)

Party

(c)

Respondent

(d)

Secretary

§ 1102.22

Appearance and practice before the Subcommittee.

(a)

By attorneys and notice of appearance.

(b)

By non-attorneys.

(c)

Conduct during proceedings.

§ 1102.23

Formal requirements as to papers filed.

(a)

Form.

1/2

(b)

Caption.

(c)

Party names, signatures, certificates of service.

(d)

Copies.

§ 1102.24

Filing requirements.

(a)

Filing.

(b)

Manner of filing.

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

[57 FR 31650, July 17, 1992, as amended at 69 FR 2501, Jan. 16, 2004]

§ 1102.25

Service.

(a)

Methods; appearing party.

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

(b)

Methods; non-appearing party.

(1) By personal service;

(2) By delivery to a person of suitable age and discretion at the party's last known address;

(3) By registered or certified mail addressed to the party's last known address; or

(4) By any other manner reasonably calculated to give actual notice.

(c)

By the Subcommittee.

(d)

By the respondent.

§ 1102.26

When papers are deemed filed or served.

(a)

Effectiveness.

(1) For personal service or same-day commercial courier delivery, upon actual delivery; and

(2) For overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in, or delivery to, an appropriate point of collection.

(b)

Modification.

§ 1102.27

Computing time.

(a)

General rule.

(b)

For service and filing responsive papers.

(1) If service is made by first class, registered or certified mail, add three days to the prescribed

period; and

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period.

§ 1102.28

Documents and exhibits in proceedings public.

Unless and until otherwise ordered by the ASC or unless otherwise provided by statute or by ASC regulation, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the Secretary in the proceeding's public file and will be available for public inspection and copying at the address set out in § 1102.24 of this subpart.

§ 1102.29

Conduct of proceedings.

(a)

In general.

(b)

Written submissions.

(c)

Disqualification.

(d)

User of ASC staff.

(e)

Authority of Subcommittee Chairperson.

(f)

Conferences.

(i) Scheduling of matters, including a timetable for the information-gathering phase of the proceeding;

(ii) Simplification and clarification of the issues;

(iii) Stipulations and admissions of fact and of the content and authenticity of documents;

(iv) Matters of which official notice will be taken; and

(v) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of persons submitting affidavits or other documents and exhibits which may be introduced into the public file of the proceeding.

(2) Such conferences will not be recorded, but the Secretary shall place in the proceeding's public file a memorandum summarizing the results of the conference and shall provide a copy of the memorandum to each party. The memorandum shall control the subsequent course of the proceedings, unless the ASC for good cause shown by one or more parties to the conference, modifies those results and instructs the Secretary to place an amendatory memorandum to that effect in the public file.

(g)

Changes or extensions of time and changes of place of proceeding.

Federal Register

(h)

Call for further briefs, memoranda, statements; reopening of matters.

[57 FR 31650, July 17, 1992, as amended at 57 FR 35004, Aug. 7, 1992]

§ 1102.30

Rules of evidence.

(a)

In general.

et seq.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted under this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may be deemed or

ruled admissible in a proceeding conducted under this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b)

Stipulations.

(c)

Official notice.

§ 1102.31

Burden of proof.

The ultimate burden of proof shall be on the respondent. The burden of going forward with a

prima facie

§ 1102.32

Notice of Intention to Commence a Proceeding.

The ASC shall instruct the Secretary or other designated officer acting for the ASC to publish in the

Federal Register

§ 1102.33

Rebuttal or Notice Not To Contest.

(a)

When required.

(b)

Requirements of Rebuttal; effect of failure to deny.

(c)

Notice Not To Contest.

(d)

Effect of failure to file Rebuttal or Notice Not To Contest.

§ 1102.34

Briefs, memoranda and statements.

(a)

By the parties.

(b)

By interested persons, in non-recognition proceedings.

§ 1102.35

Opportunity for informal settlement.

Any party may at any time submit to the Secretary, for consideration by the Subcommittee, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be included in the proceeding's public file over the objection of any party to such proceeding. This paragraph shall not preclude settlement of any proceeding by the filing of a Notice Not To Contest as provided in § 1102.33(c) or by the submission of the case to the ASC on a stipulation of facts.

§ 1102.36

Oral presentations.

(a)

In general.

(b)

Method and time of request.

(c)

ASC processing.

(d)

Procedure on presentation day.

§ 1102.37

Decision of the Subcommittee and judicial review.

At a reasonable time after the end of the information-gathering phase of the proceeding, but not exceeding 35 days, the ASC shall issue a final decision,

Federal Register.

§ 1102.38

Compliance activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of information by the ASC, or otherwise, it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder, the ASC staff may commence an informal, preliminary inquiry into the matter. If, upon such inquiry, it appears that one or more allegations relate to possible violations of regulations administered by another agency or instrumentality of the Federal Government, then the matter shall be referred to that agency or instrumentality for appropriate action. The ASC, pursuant to its responsibilities under section 1103(a)(2) of title XI (12 U.S.C. 3332(a)(2)) and section 1119(c) of title XI (12 U.S.C. 3348)), shall monitor the matter. If, upon inquiry, it appears that one or more allegations are within the ASC's jurisdiction, then the ASC, in its discretion, may determine to commence a formal investigation respecting the matter and shall instruct the Secretary to create a public file for the formal investigation. The Secretary shall place in that file a memorandum naming the person or persons subject to the investigation and the statutory basis for the investigation.

(b) Unless otherwise instructed by the ASC or required by law, the Secretary shall ensure that all other papers, documents and materials gathered or submitted in connection with the investigation are non-public and for ASC use only.

(c) Persons who become involved in preliminary inquiries or formal investigations may, on their own initiative, submit a written statement to the Secretary setting forth their interests, positions or views regarding the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them and the amount of time that may be available for preparing and submitting such a statement prior to the presentation of a staff recommendation to the ASC. Upon the commencement of a formal investigation or a proceeding under this subpart, the Secretary shall

place any such statement in the appropriate public file.

(d) In instances where the staff has concluded its inquiry of a particular matter and has determined that it will not recommend the commencement of a formal investigation or a proceeding under this subpart against a person, the staff shall advise the person that its inquiry has been terminated. Such advice, if given, must in no way be construed as indicating that the person has been exonerated or that no action may ultimately result from the staff's inquiry into the particular matter.

§ 1102.39

Duty to cooperate.

In the course of the investigations and proceedings, the ASC (and its staff, with appropriate authorization) must provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner.

Subpart CRules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

Authority:

Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896; 12 U.S.C. 552a, as amended.

Source:

57 FR 36357, Aug. 13, 1992, unless otherwise noted.

§ 1102.100

Authority, purpose and scope.

(a) This subpart is issued under the Privacy Act of 1974, Public Law 93-579,

(b) The Privacy Act of 1974 is based, in part, on the finding by Congress that in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies. To achieve this objective, the Act generally provides that Federal agencies must advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and must grant the individual access to such

records. The Act further provides that individuals may request amendments to records pertaining to them that are maintained by the agency, and that the agency shall either grant the requested amendments or set forth fully its reasons for refusing to do so.

(c) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC), pursuant to subsection (f) of the Privacy Act, adopts the following rules and procedures to implement the provisions of the Act summarized above and other provisions of the Act. These rules and procedures are applicable to all requests for information and access or amendment to records pertaining to an individual that are contained in any system of records that is maintained by the ASC.

§ 1102.101

Definitions.

The following definitions shall apply for purposes of this subpart:

(a) The terms

individual, maintain, record, system of records,

routine use

(b)

ASC

Subcommittee

(c)

Privacy Act Officer

§ 1102.102

Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.

(a)

Place to make request.

(1)

Information to be included in requests.

Federal Register,

(2)

Verification of identity.

(3)

Methods for verifying identityappearance in person.

(4)

Method for verifying identityby mail.

(5)

Additional procedures for verifying identity.

(b)

Acknowledgement of requests for information pertaining to individual records in a record system or for access to individual records.

[57 FR 36357, Aug. 13, 1992, as amended at 69 FR 2501, Jan. 16, 2004; 75 FR 36270, June 25, 2010]

§ 1102.103

Disclosure of requested records.

(a)

Initial review.

(b)

Grant of request for access.

(2) In granting access to an individual to a record pertaining to him or her, the ASC staff shall take steps to prevent the unauthorized disclosure of information pertaining to other individuals.

(c)

Denial of request for access.

(d)

Time for acting on requests for access.

(e)

Authorization to allow designated person to review and discuss records pertaining to another individual.

(f)

Exclusion for certain records.

§ 1102.104

Special procedure: Medical records.

(a)

Statement of physician or mental health professional.

(b)

Designation of physician or mental health professional to receive records.

§ 1102.105

Requests for amendment of records.

(a)

Place to make requests.

(1)

Information to be included in requests.

(2)

Basis for amendment.

(b)

Acknowledgement of requests for amendment.

[57 FR 36357, Aug. 13, 1992, as amended at 69 FR 2501, Jan. 16, 2004; 75 FR 36270, June 25, 2010]

§ 1102.106

Review of requests for amendment.

(a)

Initial review.

(b)

Standards to be applied in reviewing requests.

i.e.,

(c)

Time for acting on requests.

(d)

Grant of requests to amend records.

(1) Advise the individual making the request in writing of the extent to which it has been granted;

(2) Amend the record accordingly; and

(3) Where an accounting of disclosures of the record has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the record has been amended and the substance of the amendment.

(e)

Denial of requests to amend records.

(1) Promptly advise the individual making the request in writing of the extent to which the request has been denied;

(2) State the reasons for the denial of the request;

(3) Describe the procedures established by the ASC to obtain further review within the ASC of the request to amend, including the name and address of the person to whom the appeal is to be addressed; and

(4) Inform the individual that the Privacy Act Officer will provide information and assistance to the individual in perfecting an appeal of the initial decision.

§ 1102.107

Appeal of initial adverse agency determination regarding access or amendment.

(a)

Administrative review.

(1) The application shall be in writing and shall describe the record in issue and set forth the proposed amendment and the reasons therefor.

(2) The application shall be delivered to the ASC, 1325 G Street NW, Suite 500, Washington, DC 20005, or by mail addressed to the Privacy Act Officer, ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

(3) The applicant may state such facts and cite such legal or other authorities in support of the application.

(4) The Executive Director will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays, and Federal holidays), unless for good cause shown, the Executive Director shall extend that period. If such an extension is made, the individual who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend a record, the Executive Director shall apply the same standards as set forth in § 1102.106(b).

(6) If the Executive Director concludes that access should be granted, the Executive Director shall issue an order granting access and instructing the Privacy Act Officer to comply with § 1102.103(b).

(7) If the Executive Director concludes that the request to amend the record should be granted in whole or in part, the Executive Director shall issue an order granting the requested amendment in whole or in part and instructing the Privacy Act Officer to comply with the requirements of § 1102.106(d) of this subpart, to the extent applicable.

(8) If the Executive Director affirms the initial decision denying access, the Executive Director shall issue an order denying access and advising the individual seeking access of:

(i) The order;

(ii) The reasons for denying access; and

(iii) The individual's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the Executive Director determines that the decision of the Privacy Act Officer denying a request to amend a record should be upheld, the Executive Director shall issue an order denying the request and the individual shall be advised of:

(i) The order refusing to amend the record and the reasons therefor;

(ii) The individual's right to file a concise statement setting forth his or her disagreement with the Executive Director's decision not to amend the record;

(iii) The procedures for filing such a statement of disagreement with the Executive Director;

(iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the Executive Director deems it appropriate, a brief statement setting forth the Executive Director's reasons for refusing to amend;

(v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the Executive Director's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The individual's right to seek judicial review of the Executive Director's refusal to amend, pursuant to 5 U.S.C. 552a(g)(1)(A).

(b)

Statement of disagreement.

(1) Such statement of disagreement shall be delivered to the ASC, 1325 G Street NW, Suite 500, Washington, DC 20005, within 30 days after receipt by the individual of the Executive Director's order denying the amendment, excluding Saturdays, Sundays and Federal holidays. For good cause shown, this period can be extended for a reasonable time.

(2) Such statement of disagreement shall concisely state the basis for the individual's disagreement. Unduly lengthy or irrelevant materials will be returned to the individual by the Executive Director for appropriate revisions before they become a permanent part of the individual's record.

(3) The record about which a statement of disagreement has been filed will clearly note which part of

the record is disputed and the Executive Director will provide copies of the statement of disagreement and, if the Executive Director deems it appropriate, provide a concise statement of his or her reasons for refusing to amend the record, to persons or other agencies to whom the record has been or will be disclosed.

[57 FR 36357, Aug. 13, 1992, as amended at 69 FR 2501, Jan. 16, 2004; 75 FR 36270, June 25, 2010]

§ 1102.108

General provisions.

(a)

Extensions of time.

good cause

unusual circumstances

(1) The need to search for and collect the requested records from establishments that are separate from the ASC. Some records of the ASC may be stored in Federal Records Centers in accordance with lawincluding many of the documents that have been on file with the ASC for more than 2 yearsand cannot be made available promptly. Any person who has requested for personal examination a record stored at the Federal Records Center will be notified when the record will be made available.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which may be demanded in a single request. While every reasonable effort will be made to comply fully with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records will be contingent upon the availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.

(3) The need for consultation, which shall be conducted with all practicable speed, with another

agency having a substantial interest in the determination of the request, or among two or more components within the ASC having substantial subject-matter interest herein.

(b)

Effective date of action.

(c)

Records in use by a member of the ASC or its staff.

(d)

Missing or lost records.

(e)

Oral requests; misdirected written requests

Telephone and other oral requests.

(2)

Misdirected written requests.

§ 1102.109

Fees.

(a) There will be no charge assessed to the individual for the ASC's expense involved in searching for or reviewing the record. Copies of the ASC's records will be provided by a commercial copier at rates established by a contract between the copier and the ASC or by the ASC at the rates in § 1101.4(b)(5)(ii) of 12 CFR part 1101.

(b)

Waiver or reduction of fees.

§ 1102.110

Penalties.

Title 18 U.S.C. 1001 makes it a criminal offense, subject to a maximum fine of $10,000, or imprisonment for not more than 5 years or both, to knowingly and willingly make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of

any agency of the United States. 5 U.S.C. 552a(i) makes it a misdemeanor punishable by a fine of not more than $5,000 for any person knowingly and willfully to request or obtain any record concerning an individual from the ASC under false pretenses. 5 U.S.C. 552a(i) (1) and (2) provide criminal penalties for certain violations of the Privacy Act by officers and employees of the ASC.

Subpart DDescription of Office, Procedures, Public Information

Authority:

5 U.S.C. 552, 553(e); and Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p. 235).

Source:

57 FR 60724, Dec. 22, 1992, unless otherwise noted.

§ 1102.300

Purpose and scope.

This part sets forth the basic policies of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC) regarding information it maintains and the procedures for obtaining access to such information. This part does not apply to the Federal Financial Institutions Examination Council. Section 1102.301 sets forth definitions applicable to this part 1102, subpart D. Section 1102.302 describes the ASC's statutory authority and functions. Section 1102.303 describes the ASC's organization and methods of operation. Section 1102.304 describes the types of information and

Federal Register.

[64 FR 72496, Dec. 28, 1999]

§ 1102.301

Definitions.

For purposes of this subpart:

(a)

ASC

(b)

Commercial use request

(c)

Direct costs

(d)

Disclose or disclosure

(e)

Duplication

e.g.,

(f)

Educational institution

(g)

Field review

(h)

Non-commercial scientific institution

(i)

Record

(j)

Representative of the news media

(k)

Review

e.g,

(l)

Search

(m)

State appraiser regulatory agency

[64 FR 72496, Dec. 28, 1999]

§ 1102.302

ASC authority and functions.

(a)

Authority.

(b)

Functions.

(1) Monitor the requirements established by the States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility;

(2) Monitor the requirements of the Federal financial institutions regulatory agency and Resolution Trust Corporation with respect to appraisal standards for federally related transactions and determinations as to which federally related transactions require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) Monitor and review the practices, procedures, activities and organizational structure of the Appraisal Foundation; and

(4) Maintain a national registry of State certified and licensed appraisers eligible to perform appraisals in federally related transactions.

§ 1102.303

Organization and methods of operation.

(a)

Statutory and other guidelines.

(b)

ASC members and staff.

(c)

FFIEC.

(d)

ASD Address

[57 FR 60724, Dec. 22, 1992, as amended at 64 FR 72497, Dec. 28, 1999]

§ 1102.304

Federal Register publication.

The ASC publishes the following information in the

Federal Register

(a) Description of its organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or re nests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the ASC;

(e) Every amendment, revision or repeal of the foregoing; and

(f) General notices of proposed rulemaking.

[64 FR 72497, Dec. 28, 1999]

§ 1102.305

Publicly available records.

(a)

Records available on the ASCs World Wide Web site

http://www.asc.gov.

(2)

Documents required to be made available via computer telecommunications.

http://www.asc.gov:

(A) Final opinions, including concurring and dissenting opinions, as well as final orders, made in the adjudication of cases;

(B) Statements of policy and interpretations adopted by the ASC that are not published in the Federal Register

(C) Administrative staff manuals and instructions to staff that affect a member of the public;

(D) Copies of all records (regardless of form or format), such as correspondence relating to field reviews or other regulatory subjects, released to any person under § 1102.306 that, because of the nature of their subject matter, the ASC has determined are likely to be the subject of subsequent requests;

(E) A general index of the records referred to in paragraph (a)(2)(i)(D) of this section.

(ii) To the extent permitted by law, the ASC may delete identifying details when it makes available or publishes any records. If reduction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction.

(b)

Types of written communications.

(1) The ASC's annual report to Congress;

(2) All final opinions and orders made in the adjudication of cases;

(3) All statements of general policy not published in the Federal Register.

(4) Requests for the ASC or its staff to provide interpretive advice with respect to the meaning or application of any statute administered by the ASC or any rule or regulation adopted thereunder and any ASC responses thereto;

(5) Requests for a statement that, on the basis of the facts presented in such a request, the ASC would not take any enforcement action pertaining to the facts as represented and any ASC responses thereto: and

(6) Correspondence between the ASC and a State appraiser regulatory agency arising out of the ASC's field review of the State agency's appraiser regulatory program.

(c)

Applicable fees.

(2) Information on the ASC's World Wide Web site is available to the public without charge. If, however, information available on the ASC's World Wide Web site is provided pursuant to a Freedom of Information Act request processed under g 1102.306 then fees apply and will be assessed pursuant to § 1102.306(e).

[59 FR 1902, Jan. 13, 1994, as amended at 64 FR 72497, Dec. 28, 1999]

§ 1102.306

Procedures for requesting records.

(a)

Making a request for records.

(i) By facsimile clearly marked Freedom of Information Act Request to (202) 293-6251;

(ii) By letter to the Executive Director marked Freedom of Information Act Request; 1325 G Street NW, Suite 500, Washington, DC 20005; or

(iii) By sending Internet e-mail to the Executive Director marked Freedom of Information Act Request at his or her e-mail address listed on the ASC's World Wide Web site.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, non-commercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (e)(1)(x) of this section; and

(iv) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the ASC's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any ASC operations.

(b)

Defective requests.

(c)

Processing requests

Receipt of requests.

(2)

Expedited processing.

(A) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) The requester can establish that it is primarily engaged in information dissemination as its main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the re request; and

(C) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(ii) The formality of the certification required to obtain expedited treatment may be waived by the Executive Director as a matter of administrative discretion.

(3) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph

(4)

Priority of responses.

(5)

Notification.

(A) In the case of expedited treatment under paragraph (c)(2) of this section;

(B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the ASC determines that the processing of the request may exceed the requester's maximum fee provision or if the charges are likely to exceed $250 as provided for in paragraph (e)(1)(iv) of this section;

(C) Where the running of such time is suspended for the payment of fees pursuant to the paragraph (c)(5)(i)(B) and (e)(1) of this section; or

(D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and further described in paragraph (c)(5)(iii) of this section.

(ii) In unusual circumstances as referred to in paragraph (c)(5)(i)(D) of this section, the time limit may be extended for a period of:

(A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(B) Such alternative time period as agreed to by the requester or as reasonably determined by the ASC when the ASC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when:

(A) The records are in facilities that are not located at the ASC's Washington office;

(B) The records requested are voluminous or are not in close proximity to one another; or

(C) There is a need to consult with another agency or among two or more components of the ASC having a substantial interest in the determination.

(6)

Response to request.

(i) The ASC's determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is withheld, the ASC will advise the requester in writing:

(A) If the denial is in part or in whole;

(B) The name and title of each person responsible for the denial (when other than the person signing the notification);

(C) The exemptions relied on for the denial; and

(D) The right of the requester to appeal the denial to the Chairman of the ASC within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(d)

Providing responsive records.

(2) The ASC shall provide a copy of the record in any form or format requested if the record is readily reproducible by the ASC in that form or format, but the ASC need not provide

(3) By arrangement with the requester, the ASC may elect to send the responsive records electronically if a substantial portion of the request is in electronic format. If the information requested is made pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be provided.

(e)

Fees

General rules.

(ii) Requesters will be charged for search and review costs even if responsive records are not located or, if located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the ASC determines that the estimated costs of search, duplication, or review of requested

records will exceed the dollar amount specified in the request, or if no dollar amount is specified, the ASC will advise the requester of the estimated costs. The requester must agree in writing to pay the costs of search, duplication, and review prior to the ASC initiating any records search.

(v) If the ASC estimates that its search, duplication, and review costs will exceed $250, the requester must pay an amount equal to 20 percent of the estimated costs prior to the ASC initiating any records search.

(vi) The ASC ordinarily will collect all applicable fees under the final invoice before releasing copies of requested records to the requester.

(vii) The ASC may require any requester who has previously failed to pay charges under this section within 30 calendar days of mailing of the invoice to pay in advance the total estimated costs of search, duplication, and review. The ASC also may require a requester who has any charges outstanding in excess of 30 calendar days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the ASC initiating any additional records search.

(viii) The ASC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the invoice was sent. Interest will be at the rate prescribed in § 3717 of title 31 of the United States Code and will accrue from the date of the invoice.

(ix) The time limit for the ASC to respond to a request will not begin to run until the ASC has received the requester's written agreement under paragraph (e)(1)(iv) of this section, and advance payment under paragraph (e)(1)(v) or (vii) of this section, or payment of outstanding charges under paragraph (e)(1)(vii) or (viii) of this section.

(x) As part of the initial request, a requester may ask that the ASC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations as to a waiver or reduction of fees will be made by the Executive Director (or designee), and the requester will be notified in writing of his or her

determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the ASC's Chairman pursuant to the procedure set forth in paragraph (g) of this section.

(2)

Chargeable fees by category of requester.

(ii) Educational institutions, noncommercial scientific institutions, and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (e)(2)(i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3)

Fee schedule.

http://www.asc.gov

(i)

Manual searches for records.

(ii)

Computer searches for records.

(iii)

Duplication of records.

(B) For other methods of reproduction or duplication, the ASC will charge the actual direct costs of reproducing or duplicating the documents, including each involved employee's basic rate of pay plus 16 percent to cover employee benefit costs.

(iv)

Review of records.

(v)

Other services.

(4)

Use of contractors.

(f)

Exempt information.

1

1

(1) Records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the ASC;

(3) Records specifically exempted from disclosure by statute, 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 that is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the ASC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trail or an impartial adjudication;

(ii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the ASC or any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(g)

Appeals.

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (e)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the ASC's Chairman (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

(3) Except in the case of an appeal for expedited treatment under paragraph (c)(3) of this section, the ASC will notify the appellant in writing within 20 business days after receipt of the appeal and will state:

(i) Whether it is granted or denied in whole or in part;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(4) If a requester is appealing for denial of expedited treatment, the ASC will notify the appellant within ten business days after receipt of the appeal of the ASC's disposition.

(5) Complete payment of any outstanding fee invoice will be required before an appeal is processed.

(h)

Records of another agency.

[64 FR 72497, Dec. 28, 1999; 65 FR 31960, May 19, 2000, as amended at 69 FR 2501, Jan. 16, 2004]

§ 1102.307

Disclosure of exempt records.

(a)

Disclosure prohibited.

(b)

Disclosure authorized.

(1)

Disclosure by Executive Director.

(ii) The Executive Director, or designee, may in his or her discretion and for good cause, disclose or authorize disclosure of any exempt record or testimony by a current or former member, officer, employee, agent of the ASC, or third party, sought in connection with any civil or criminal hearing, proceeding or investigation without the service of a judicial subpoena, or other legal process requiring such disclosure or testimony. If he or she determines that the records or testimony are relevant to the hearing, proceeding or investigation and that disclosure is in the best interests of justice and not otherwise prohibited by Federal statute. Where the Executive Director or designee authorizes a current or former member, officer, director, empl9oyee or agent of the ASC to testify or disclose exempt records pursuant to this paragraph (b)(1), he or she may, in his or

(2)

Authorization for disclosure by the Chairman of the ASC.

(3)

Limitations on disclosure.

[64 FR 72500, Dec. 28, 1999]

§ 1102.308

Right to petition for issuance, amendment and repeal of rules of general application.

Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition for those purposes with the Executive Director of the ASC. The petition shall include a statement setting forth the text or substance of any proposed rule or amendment desired or shall specify the rule for which repeal is desired. The petitioner also shall state the nature of his or her interest and the reasons for seeking ASC action. The Executive Director shall acknowledge receipt of the petition within ten business days of receipt. As soon as reasonably practicable, the ASC shall consider the petition and related staff recommendations and shall take such action as it deems appropriate. The Executive Director shall notify the petitioner in writing of the ASC action within ten business days of the action.

[59 FR 1902, Jan. 13, 1994. Redesignated at 64 FR 72497, Dec. 28, 1999]

§ 1102.309

Confidential treatment procedures.

(a)

In general.

i.e.,

(b)

Form of request.

(c)

Designation and separation of confidential material.

(d)

ASC action on request.

(e)

Notice of lawsuit.

[59 FR 1902, Jan. 13, 1994. Redesignated at 64 FR 72497, Dec. 28, 1999]

§ 1102.310

Service of process.

(a)

Service.

(b)

Notification by person served.

(c)

Appearance by person served.

[64 FR 72501, Dec. 28, 1999]

Subpart ECollection and Transmission of Appraisal Management Company (AMC) Registry Fees

Source:

82 FR 44501, Sept. 25, 2017, unless otherwise noted.

§ 1102.400

Authority, purpose, and scope.

(a)

Authority.

(b)

Purpose.

(c)

Scope.

§ 1102.401

Definitions.

For purposes of this subpart:

(a)

AMC Registry

(b) AMC Rule

(c)

ASC

et seq.

(d)

Performed an appraisal

(e)

State

(f)

Other terms.

Appraisal management company (AMC); appraisal management services; appraisal panel; consumer credit; covered transaction; dwelling; Federally regulated AMC

§ 1102.402

Establishing the annual AMC registry fee.

The annual AMC registry fee to be applied by States that elect to register and supervise AMCs is established as follows:

(a) In the case of an AMC that has been in existence for more than a year,

(b) In the case of an AMC that has not been in existence for more than a year, $25 multiplied by the number of appraisers who have performed an appraisal for the AMC in connection with a covered transaction in such State since the AMC commenced doing business.

§ 1102.403

Collection and transmission of annual AMC registry fees.

(a)

Collection of annual AMC registry fees.

(b)

Transmission of annual AMC registry fee.

PARTS 1103-1199 [RESERVED]

CHAPTER XIIFEDERAL HOUSING FINANCE AGENCY

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1200.4

OMB control numbers assigned under the Paperwork Reduction Act.

Authority:

5 U.S.C. 552, 12 U.S.C. 4512, 12 U.S.C. 4526, 44 U.S.C. 3506.

Source:

77 FR 73264, Dec. 10, 2012, unless otherwise noted.

§ 1200.1

Federal Housing Finance Agency.

(a)

Scope and authority.

et seq.

(b)

Location.

[77 FR 73264, Dec. 10, 2012, as amended at 80 FR 80233, Dec. 24, 2015]

§ 1200.2

Organization of the Federal Housing Finance Agency.

(a)

Director.

(b)

Deputy Director of the Division of Enterprise Regulation.

(c)

Deputy Director of the Division of Housing Mission and Goals.

(d)

Deputy Director of the Division of Federal Home Loan Bank Regulation.

(e)

Offices and functions

Office of the Director.

(2)

Division of Enterprise Regulation.

(3)

Division of Housing Mission and Goals.

(4)

Division of Federal Home Loan Bank Regulation.

(5)

Office of Inspector General.

(6)

Office of General Counsel.

(7)

Office of the Ombudsman.

(8)

Office of Minority and Women Inclusion.

(f)

Other Offices and Departments.

(g)

Additional information.

www.FHFA.gov.

[77 FR 73264, Dec. 10, 2012, as amended at 80 FR 45599, July 31, 2015; 80 FR 80233, Dec. 24, 2015]

§ 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.

www.fhfa.gov.

(b)

Display.

ER31JY15.025

[77 FR 73264, Dec. 10, 2012, as amended at 80 FR 45599, July 31, 2015]

§ 1200.4

OMB control numbers 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 expirations dates for those control numbers:

12 CFR part or section where identified and described

OMB

control No.

Expiration

date

1222.22

2590-0013

07/31/2018

1222.23

2590-0013

07/31/2018

1222.24

2590-0013

07/31/2018

1222.25

2590-0013

07/31/2018

1222.26

2590-0013

07/31/2018

1223.23

2590-0014

07/31/2018

1261.7

2590-0006

02/28/2021

1261.12

2590-0006

02/28/2021

1261.14

2590-0006

02/28/2021

1263.2

2590-0003

03/31/2020

1263.4

2590-0003

03/31/2020

1263.5

2590-0003

03/31/2020

1263.6

2590-0003

03/31/2020

1263.7

2590-0003

03/31/2020

1263.8

2590-0003

03/31/2020

1263.9

2590-0003

03/31/2020

1263.11

2590-0003

03/31/2020

1263.12

2590-0003

03/31/2020

1263.13

2590-0003

03/31/2020

1263.14

2590-0003

03/31/2020

1263.15

2590-0003

03/31/2020

1263.16

2590-0003

03/31/2020

1263.17

2590-0003

03/31/2020

1263.18

2590-0003

03/31/2020

1263.19

2590-0003

03/31/2020

1263.24

2590-0003

03/31/2020

1263.26

2590-0003

03/31/2020

1263.31

2590-0003

03/31/2020

1264.4

2590-0001

12/31/2018

1264.5

2590-0001

12/31/2018

1264.6

2590-0001

12/31/2018

1266.17

2590-0001

12/31/2018

1268.7

2590-0008

02/29/2016

1277.22

2590-0002

04/30/2020

1277.28

2590-0002

04/30/2020

1290.2

2590-0005

03/31/2020

1290.3

2590-0005

03/31/2020

1290.4

2590-0005

03/31/2020

1290.5

2590-0005

03/31/2020

1291.5

2590-0007

03/31/2020

1291.6

2590-0007

03/31/2020

1291.7

2590-0007

03/31/2020

1291.8

2590-0007

03/31/2020

1291.9

2590-0007

03/31/2020

[81 FR 76294, Nov. 2, 2016, as amended at 83 FR 39325, Aug. 9, 2018]

Pt. 1201

PART 1201GENERAL 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:

1934 Act

et seq.

Acquired member assets

AMA

Advance

(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

Appropriate Federal banking agency

Appropriate state regulator

Authorizing Statutes

Bank,

Bank Act

et seq.

Bank System

Capital plan

CIP

Community Investment Cash Advance or CICA

Community lending

Consolidated obligation or CO

Data Reporting Manual or DRM

Director,

Enterprise

Excess stock

Fannie Mae

FDIC

FHFA

Financing Corporation or FICO

FRB

Freddie Mac

Generally Accepted Accounting Principles or GAAP

Ginnie Mae

GLB Act

HERA

Housing associate

HUD

Member

NCUA

NRSRO

OCC

Office of Finance or OF

President,

Regulated Entity

Resolution Funding Corporation or REFCORP

Safety and Soundness Act

et seq.

SBIC

SEC

State

[78 FR 2322, Jan. 11, 2013, as amended at 79 FR 64665, Oct. 31, 2014; 81 FR 76295, Nov. 2, 2016; 81 FR 91688, Dec. 19, 2016]

Pt. 1202

PART 1202FREEDOM OF INFORMATION ACT

Sec.

1202.1

Why did FHFA issue this part?

1202.2

What do the terms in this part mean?

1202.3

What information can I obtain through the FOIA?

1202.4

What information is exempt from disclosure?

1202.5

How do I request information from FHFA under the FOIA?

1202.6

What if my request does not have all the information FHFA requires?

1202.7

How will FHFA respond to my FOIA request?

1202.8

If the requested records contain confidential commercial information, what procedures will FHFA follow?

1202.9

How do I appeal a response denying my FOIA request?

1202.10

Will FHFA 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?

Appendix A to Part 1202FHFA Headquarters

Appendix B to Part 1202FHFA Office of Inspector General

Authority:

Pub. L. 110-289, 122 Stat. 2654; 5 U.S.C. 301, 552; 12 U.S.C. 4526; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373-75377, 3 CFR, 2006 Comp., p. 216-200.

Source:

82 FR 13745, Mar. 15, 2017, unless otherwise noted.

§ 1202.1

Why did FHFA issue this part?

The Federal Housing Finance Agency (FHFA) issued this regulation to comply with the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(a) The Freedom of Information Act (FOIA) (5 U.S.C. 552), is a Federal law that requires the Federal Government to disclose certain Federal Government records to the public.

(b) This part explains the rules that the FHFA will follow when processing and responding to requests for records under the FOIA. It also explains what you must do to request records from FHFA under the FOIA. You should read this part together with the FOIA, which explains in more detail your rights and the records FHFA may release to you.

(c) If you want to request information about yourself that is contained in a system of records maintained by FHFA, you may do so under the Privacy Act of 1974, as amended (5 U.S.C. 552a). This is considered a first-party or Privacy Act request under the Privacy Act, and you must file your request following FHFA's Privacy Act regulation at part 1204 of this title. If you file a request for information about yourself, FHFA will process your request under both the FOIA and Privacy Act in order to give you the greatest degree of access to any responsive material.

(d) Notwithstanding the FOIA and this part, FHFA may routinely publish or disclose to the public information without following these procedures.

§ 1202.2

What do the terms in this part mean?

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

Aggregating

Appeals Officer or FOIA Appeals Officer

Chief FOIA Officer

Confidential commercial information

Days,

Direct costs

Duplication

Employee,

Fee Waiver

FHFA

FOIA Officer, FOIA Official and Chief FOIA Officer

FOIA Public Liaison

Proactive disclosure

Readily reproducible

Record

(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

(3) Controls at the time it receives a request under the FOIA.

Regulated entities

Requester

three

(1)

Commercial

(2)

Noncommercial

(i)

Educational institution

(ii)

Noncommercial scientific institution

(iii)

Representative of the news media

(3)

Other

Requester Service Centers

Review

Search

Submitter

Unusual circumstances

(1) Search for and collect records from agencies, offices, facilities, or locations that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine 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 the FHFA that have a substantial interest in the determination of a request.

Vaughn index

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5683, Feb. 9, 2018]

§ 1202.3

What information can I obtain through the FOIA?

(a)

General.

(b)

Proactive disclosure.

(1) Final opinions or orders made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by FHFA that are not published in the

Federal Register

(3) Administrative staff manuals and instructions to staff that affect a member of the public and are not exempt from disclosure under the FOIA;

(4) Copies of all records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3), that because of the nature of their subject matter, FHFA determines have

become or are likely to become the subject of subsequent requests for substantially the same records, or that have been requested 3 or more times; and

(5) A general index of the records referred to in paragraph (b)(4) of this section.

(c)

Reading rooms.

§ 1202.4

What information is exempt from disclosure?

(a)

General.

(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 internal personnel rules and practices;

(3) Specifically exempted 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 intra-agency memoranda or letters that would not be available by law to a private party in litigation with FHFA; provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) Contained in personnel, medical or similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution or an entity that is regulated and examined by FHFA that furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b)

Redacted portion.

(c)

Exempt and redacted material.

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5683, Feb. 9, 2018]

§ 1202.5

How do I request information from FHFA under the FOIA?

(a)

Where to send your request.

(b)

Provide your name and address.

(c)

Request is under the FOIA.

(d)

Your FOIA status.

(e)

Describing the records you request.

(f)

How you want the records produced to you.

e.g.,

(g)

Agreement to pay fees.

(h)

Valid requests.

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5683, Feb. 9, 2018]

§ 1202.6

What if my request does not have all the information FHFA requires?

If FHFA determines that your request does not reasonably describe the records you seek, cannot 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 meet all requirements. If you are notified that your request cannot be processed for the reasons cited herein, your request will be placed on hold and will not be considered as being received by FHFA for the purpose of processing your request under this part.

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

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

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5683, Feb. 9, 2018]

§ 1202.7

How will FHFA respond to my FOIA request?

(a)

Authority to grant or deny requests.

(b)

Designated standard cut-off date for searches.

(c)

Multi-Track request processing.

(1)

Standard Track.

(2)

Complex Track.

(A) Be voluminous;

(B) Involve two or more FHFA components or 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 of this part;

(F) Require an unusually high level of effort to search for, review and/or duplicate records; or

(G) Cause undue disruption to the day-to-day activities of FHFA in regulating and supervising the

regulated

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

(d)

Referrals to other agencies.

(e)

Consultation with other agencies.

(f)

Responses to FOIA requests.

(1)

Requests that are granted.

(2)

Requests that are denied, or granted and denied in part.

(g)

Format and delivery of disclosed records.

(h)

Extensions of time.

(i) The reason for the extension; and

(ii) The date on which the determination is expected.

(2) When a request requires more than 30 days to process, FHFA will make available its FOIA Public Liaison or other FOIA contact to assist you in modifying or reformulating your request. If the request cannot be modified or reformulated, FHFA will notify you regarding an alternative time period for processing the request. FHFA will also notify you of the availability of the Office of Government Information Services to provide dispute resolution service.

(3) For the purpose of satisfying unusual circumstances under the FOIA, FHFA may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a

requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. FHFA will not aggregate multiple requests that involve unrelated matters.

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5683, Feb. 9, 2018]

§ 1202.8

If the requested records contain confidential commercial information, what procedures will FHFA follow?

(a)

General.

(b)

Designation of confidential commercial information.

(c)

Pre-Disclosure Notification.

(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) of this part; or

(2) FHFA 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.

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

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

(e)

Exceptions to Pre-Disclosure Notification.

(1) FHFA 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 the FOIA;

(4) The information requested is not designated by the submitter as confidential commercial information pursuant to this section, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The submitter's designation, under paragraph (b) of this section, appears on its face to be frivolous; except that FHFA 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.

(g)

Notice of Intent to disclose information.

(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.

(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) of this part 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 may allow, to respond.

(i)

Notice of FOIA lawsuit.

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5684, Feb. 9, 2018]

§ 1202.9

How do I appeal a response denying my FOIA request?

(a)

Right of appeal.

(b)

Timing, form, content, and receipt of an appeal.

(c)

Extensions of time to appeal.

(d)

Final action on appeal.

(1) Affirm, in whole or in part, the initial denial of the request and may include a brief statement of the reason or reasons for the decision, including each FOIA exemption relied upon;

(2) Reverse, in whole or in part, the denial of a request in whole or in part, and require the request to be processed promptly in accordance with the decision; or

(3) Remand a request to FHFA, as appropriate, for re-processing.

(e)

Notice of delayed determinations on appeal.

(f)

Judicial review.

(g)

Additional resource.

ogis@nara.gov;

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5684, Feb. 9, 2018]

§ 1202.10

Will FHFA expedite my request or appeal?

(a)

Request for expedited processing.

(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.

(c)

Determination on request.

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5684, Feb. 9, 2018]

§ 1202.11

What will it cost to get the records I requested?

(a)

Assessment of fees, generally.

(b)

Assessment of fees, categories of requesters.

(1)

Commercial use.

(2)

Educational institution, noncommercial scientific institution, or representative of the news media.

(3)

Other.

(c)

Fee schedule.

www.fhfa.gov,

1

1

(d)

Notice of anticipated fees in excess of $25.00.

(e)

Advance payment of fees.

(1) The fees are likely to exceed $250.00;

(2) You do not have a history of payment;

(3) You previously failed to pay a FOIA fee to FHFA in a timely fashion,

i.e.,

(4) You have an outstanding balance due from a prior request. FHFA will 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.

(g)

FHFA assistance to reduce costs.

(h)

Fee waiver requests.

(1) Whether the subject of the requested records concerns the operations or activities of the Federal

Government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated;

(2) Whether the disclosure is likely to contribute significantly to the public understanding of Federal Government operations or activities. This factor is satisfied when the following criteria are met:

(i) Disclosure of the requested information must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding; and

(ii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding. Your expertise in the subject area as well as your ability and intention to effectively convey information to the public must be considered. FHFA will presume that a representative of the news media will satisfy this consideration.

(3) The disclosure must not be primarily in your commercial interest. To determine whether disclosure of the requested information is primarily in your commercial interest FHFA will consider the following criteria:

(i) FHFA will determine whether you have any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. You will be given an opportunity to provide explanatory information regarding this consideration; and

(ii) If there is an identified commercial interest, FHFA will determine whether that is the primary interest furthered by the request.

(i)

Fee Waiver determination.

(j)

Restrictions on charging fees.

(2)(i) If FHFA fails to comply with the FOIA's time limits in which to respond to your request, FHFA

will not charge search fees, or, in the instances of requests from requesters described in paragraph (j)(1) of this section, will not charge duplication fees, except as described in paragraphs (j)(2)(ii) through (iv) of this section.

(ii) If FHFA has determined that unusual circumstances as defined by the FOIA apply and FHFA has provided timely written notice to you in accordance with the FOIA, FHFA's failure to comply with the time limit will be excused for an additional 10 days.

(iii) If FHFA determines that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to your request, FHFA may charge search fees, or, in the case of a requester described in paragraph (j)(1) of this section, may charge duplication fees, if the following steps are taken. FHFA must have provided timely written notice of unusual circumstances to you in accordance with the FOIA and FHFA must have discussed with you via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how you could effectively limit the scope of your request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, FHFA may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) If you seek records for a commercial use, FHFA will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than $25.00.

(k)

Additional resource.

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5684, Feb. 9, 2018]

§ 1202.12

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 the FOIA. This regulation only provides procedures for requesting records under the FOIA.

Pt. 1202, App. A

Appendix A to Part 1202FHFA Headquarters

1. This Appendix applies to the Federal Housing Finance Agency's Headquarters Office.

2.

Reading room.

http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/Reading-Room.aspx

3.

Where to send your request.

foia@fhfa.gov.

http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/FOIA-Reference-Guide.aspx

4.

Right of appeal.

foia@fhfa.gov.

http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/FOIA-Reference-Guide.aspx

[82 FR 13745, Mar. 15, 2017, as amended at 83 FR 5685, Feb. 9, 2018]

Pt. 1202, App. B

Appendix B to Part 1202FHFA Office of Inspector General

This Appendix applies to the Federal Housing Finance Agency's Office of Inspector General (FHFA-OIG).

1.

Contact information for FOIA Officer.

FOIA@fhfaoig.gov.

2.

Information about the FHFA-OIG FOIA process.

https://www.fhfaoig.gov/FOIA

3.

Reading room.

https://www.fhfaoig.gov/FOIA/ReadingRoom

4.

Where to send your request.

FOIA@fhfaoig.gov.

5.

Right of appeal.

FOIA@fhfaoig.gov.

Pt. 1203

PART 1203EQUAL ACCESS TO JUSTICE ACT

Subpart AGeneral Provisions

Sec.

1203.1

Purpose and scope.

1203.2

Definitions.

1203.3

Eligible parties.

1203.4

Standards for awards.

1203.5

Authority:

12 U.S.C. 4526, 5 U.S.C. 504.

Source:

75 FR 65219, Oct. 22, 2010, unless otherwise noted..

Subpart AGeneral Provisions

§ 1203.1

Purpose and scope.

(a) This part implements the Equal Access to Justice Act, 5 U.S.C. 504, by establishing procedures for the filing and consideration of applications for awards of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before FHFA.

(b) This part applies to the award of fees and other expenses in connection with adversary adjudications before FHFA. However, if a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 1203.2

Definitions.

As used in this part:

Adjudicative officer

Adversary adjudication

Affiliate

Agency counsel

Demand of FHFA

Director

Fees and other expenses

FHFA

Final disposition date

Party

Position of FHFA

§ 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;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization that has a net worth of not more than $7 million and not more than 500 employees; or

(6) For the purposes of an application filed pursuant to 5 U.S.C. 504(a)(4), a small entity as defined in 5 U.S.C. 601.

(c) For purposes of eligibility under this section:

(1) The employees of a party must include all persons who regularly perform services for remuneration for the party, under the party's direction and control. Part-time employees must be included on a proportional basis.

(2) The net worth and number of employees of the party and its affiliates must be aggregated to determine eligibility.

(3) The net worth and number of employees of a party will be determined as of the date the underlying adversary adjudication was initiated.

(4) A party that participates in an adversary adjudication primarily on behalf of one or more entities that would be ineligible for an award is not itself eligible for an award.

§ 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 related to defending against a demand of FHFA if the demand was in excess of the decision in the underlying adversary adjudication and was unreasonable when compared with the decision under the facts and circumstances

(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

(5) Such other factors as may bear on the value of the services provided.

(c) In determining the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party, the adjudicative officer will consider the prevailing rate for similar services in the community in which the services were performed.

(d) Fees and other expenses incurred before the date on which an adversary adjudication was initiated will be awarded only if the eligible party can demonstrate that they were reasonably incurred in preparation for the adversary adjudication.

§ 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 BInformation 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 determine whether the applicant qualifies as an eligible party;

(ii) A copy of a ruling by the Internal Revenue Service that shows that the applicant qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the belief that the applicant qualifies under such section; or

(iii) A statement that the applicant is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

§ 1203.11

Confidentiality of net worth exhibit.

Unless otherwise ordered by the Director, or required by law, the statement of net worth will be for the confidential use of the adjudicative officer, the Director, and agency counsel.

§ 1203.12

Documentation for fees and expenses.

(a) The application for award must be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

(b) A separate itemized statement must be submitted for each entity or individual whose services are covered by the application. Each itemized statement must include:

(1) The hours spent by each entity or individual;

(2) A description of the specific services performed and the rates at which each fee has been computed; and

(3) Any expenses for which reimbursement is sought, the total amount

§§ 1203.13-1203.19

[Reserved]

Subpart CProcedures for Filing and Consideration of the Application for Award

§ 1203.20

Filing and service of the application for award and related papers.

(a) An application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

(b) An application for award and other papers related to the proceedings on the application for award must be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

(c) The computation of time for filing and service of the application of award and other papers must be computed in the same manner as in the underlying adversary adjudication.

§ 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

[75 FR 65219, Oct. 22, 2010, as amended at 80 FR 80233, Dec. 24, 2015]

PART 1204PRIVACY ACT IMPLEMENTATION

Sec.

Authority:

5 U.S.C. 552a.

Source:

76 FR 51871, Aug. 19, 2011, unless otherwise noted.

Editorial Note:

Nomenclature changes to part 1204 appear at 77 FR 4646, Jan. 31, 2012.

§ 1204.1

Why did FHFA issue this part?

The Federal Housing Finance Agency (FHFA) issued this part to

(a) Implement the Privacy Act, a Federal law that helps protect private information about individuals that Federal agencies collect or maintain. You should read this part together with the Privacy Act, which provides additional information about records maintained on individuals;

(b) Establish rules that apply to all FHFA and FHFA Office of Inspector General (FHFA-OIG) maintained systems of records retrievable by an individual's name or other personal identifier;

(c) Describe procedures through which you may request access to records, request amendment or correction of those records, or request an accounting of disclosures of those records by FHFA or FHFA-OIG;

(d) Inform you, that when it is appropriate to do so, FHFA or FHFA-OIG automatically processes a Privacy Act request for access to records under both the Privacy Act and FOIA, following the rules contained in this part and in FHFA's Freedom of Information Act regulation at part 1202 of this title so that you will receive the maximum amount of information available to you by law;

(e) Notify you that this part does not entitle you to any service or to the disclosure of any record to which you are not entitled under the Privacy Act. It also does not, and may not be relied upon, to create any substantive or procedural right or benefit enforceable against FHFA or FHFA-OIG; and

(f) Notify you that this part applies to both FHFA and FHFA-OIG.

§ 1204.2

What do the terms in this part mean?

The following definitions apply to the terms used in this part

Access

Amendment

Court

Days,

FHFA

FHFA-OIG

FOIA

Individual

Maintain

Privacy Act

Privacy Act Appeals Officer

Privacy Act Appeals Officer

Privacy Act Officer

Privacy Act Officer

Record

Routine use

Senior Agency Official for Privacy

System of Records

System of Records Notice

Federal Register

§ 1204.3

How do I make a Privacy Act request?

(a)

What is a valid request?

(b)

How and where do I make a request?

privacy@fhfa.gov.

http://www.fhfa.gov,

(c)

What must the request include?

(d)

How do I request amendment or correction of a record?

(e)

How do I request for an accounting of disclosures?

(f)

Must I verify my identity?

(1)

How do I verify my identity?

i.e.

i.e.

(2)

How do I verify parentage or guardianship?

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address, date and place of birth, and, at your option, the Social Security number of the individual;

(ii) Your own identity, as required in paragraph (f)(1) of this section;

(iii) That you are the parent or guardian of the individual, which you may prove by providing a properly authenticated copy of the individual's

(iv) That you are acting on behalf of the individual in making the request.

[76 FR 51871, Aug. 19, 2011, as amended at 77 FR 4646, Jan. 31, 2012; 80 FR 80233, Dec. 24,

2015]

§ 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?

http://www.fhfa.gov.

http://www.gpoaccess.gov/privacyact/index.html.

(b)

How long does FHFA or FHFA-OIG have to respond?

(c)

What will the FHFA or FHFA-OIG response include?

(d)

What is an adverse determination?

(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?

§ 1204.5

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

(a)

May I appeal the response?

(b)

How do I appeal the response?

(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.

http://www.fhfa.gov,

(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.

(c)

Who has the authority to grant or deny appeals?

(d)

When will FHFA or FHFA-OIG respond to my appeal?

(e)

What will the FHFA or FHFA-OIG response include?

(1) If your appeal concerns a request for access to records or information and the appeal determination grants your access, the records or information, if any, will be made available to you.

(2)(i) If your appeal concerns an amendment or correction of a record and the appeal determination grants your request for an amendment or correction, the response will describe any amendment or correction made to the record and advise you of your right to obtain a copy of the amended or corrected record under this part. FHFA or FHFA-OIG will notify all persons, organizations, or Federal agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. Whenever the record is subsequently disclosed, the record will be disclosed as amended or corrected.

(ii) If the response to your appeal denies your request for an amendment or correction to a record, the response

(f)

What is a Statement of Disagreement?

(2) FHFA and FHFA-OIG will notify all persons, organizations, and Federal agencies to which it previously disclosed the disputed record, if an accounting of that disclosure was made, that the record is disputed and provide your Statement of Disagreement and the FHFA or FHFA-OIG concise statement, if any. Whenever the disputed record is subsequently disclosed, a copy of your Statement of Disagreement and the FHFA or FHFA-OIG concise statement, if any, will also be disclosed.

[76 FR 51871, Aug. 19, 2011, as amended at 77 FR 4646, Jan. 31, 2012; 80 FR 80233, Dec. 24, 2015]

§ 1204.6

What does it cost to get records under the Privacy Act?

(a)

Must I agree to pay fees?

(b)

How does FHFA or FHFA-OIG calculate fees?

§ 1204.7

Are there any exemptions from the Privacy Act?

(a)

What is a Privacy Act exemption?

(b)

How do I know if the records or information I want are 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?

(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 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.

(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, 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.

(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?

(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?

§ 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;

(2) The principal purpose for which FHFA or FHFA-OIG intends to use the information;

(3) The routine uses FHFA or FHFA-OIG may make of the information; and

(4) The effects on the individual, if any, of not providing the information.

(d) Ensure that the employee's office does not maintain a system of records without public notice and notify appropriate officials of the existence or development of any system of records that is not

the subject of a current or planned public notice;

(e) Maintain all records that are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except for disclosures made under FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by FHFA or FHFA-OIG to persons, organizations, or Federal agencies;

(h) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(i) Notify the appropriate official of any record that contains information that the Privacy Act does not permit FHFA or FHFA-OIG to maintain.

§ 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

(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.

Pt. 1206

PART 1206ASSESSMENTS

Sec.

Authority:

12 U.S.C. 4516.

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:

Act

Adequately capitalized

Director

Enterprise

Federal Home Loan Bank,

Bank,

FHFA

Minimum required regulatory capital

Regulated Entity

Surplus funds

Total exposure

Working capital fund

[73 FR 56713, Sept. 30, 2008, as amended at 85 FR 82198, Dec. 17 2020]

§ 1206.3

Annual assessments.

(a)

Establishing assessments.

(1) Expenses of any examinations under 12 U.S.C. 4517 and section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440);

(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. 4635;

(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

(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.

(1)

Enterprises.

(2)

Federal Home Loan Banks.

pro rata

(c)

Timing and amount of semiannual payment.

(d)

Surplus funds.

[73 FR 56713, Sept. 30, 2008, as amended at 83 FR 39326, Aug. 9, 2018]

§ 1206.4

Increased costs of regulation.

(a)

Increase for inadequate capitalization.

(b)

Increase for enforcement activities.

(c)

Additional assessment for deficiencies.

pro rata

§ 1206.5

Working capital fund.

(a)

Assessments.

(b)

Purposes.

(c)

Remittance of excess assessed funds.

§ 1206.6

Notice and review.

(a)

Written notice of budget.

(b)

Written notice of assessments.

(1)

Annual assessments.

(2)

Immediate assessments.

(3)

Changes to assessments.

(c)

Request for review.

§ 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.

The Director may enforce the payment of any assessment under 12 U.S.C. 4631 (cease-and-desist proceedings), 12 U.S.C. 4632 (temporary cease-and-desist orders), and 12 U.S.C. 4626 (civil money penalties).

Pt. 1207

PART 1207MINORITY AND WOMEN OUTREACH PROGRAM

Sec.

1207.1

Definitions.

1207.2

FHFA workforce diversity; Equal Employment Opportunity Program.

1207.3

FHFA contracting and diversity and inclusion.

1207.4

Limitations.

Authority:

12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

Source:

82 FR 14994, Mar. 24, 2017, unless otherwise noted.

§ 1207.1

Definitions.

The terms in this part have the same meaning as in FHFA's Minority and Women Inclusion Regulation at part 1223 of this chapter, as may be amended from time to time.

§ 1207.2

FHFA workforce diversity; Equal Employment Opportunity Program.

(a)

Responsibility.

(b)

General.

(c)

Workforce diversity.

(d)

Affirmative steps for workforce diversity.

(1) Recruiting at historically Black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve the individuals with disabilities and majority minority populations;

(2) Sponsoring and recruiting at job fairs in urban communities;

(3) Placing employment advertisements in media oriented toward minorities and women;

(4) Partnering with organizations that are focused on developing opportunities for minorities and women to place talented minorities and women in industry internships, summer employment, and

full-time positions; and

(5) Where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations, to establish or enhance financial literacy and provide mentoring.

§ 1207.3

FHFA contracting and diversity and inclusion.

(a)

Responsibilities.

(b)

Outreach.

(1) Identifying contractors that are minority- and women-owned by obtaining lists and directories maintained by government agencies, trade groups, and other organizations;

(2) Advertising contract opportunities through media targeted to reach potential contractors that are minority- and women-owned; and

(3) Participating in events such as conventions, trade shows, seminars, professional meetings, and other gatherings intended to promote business opportunities for minority- and women-owned businesses.

(c)

Technical assistance.

(d)

Monitoring.

§ 1207.4

Limitations.

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 FHFA, the United States, its other departments, agencies, or entities, its officers, employees, or agents.

Pt. 1208

PART 1208DEBT COLLECTION

Subpart AGeneral

Sec.

Authority:

5 U.S.C. 5514; 12 U.S.C. 4526; 26 U.S.C. 6402(d); 31 U.S.C. 3701-3720D; 31 CFR 285.2; 31 CFR Chapter IX.

Subpart AGeneral

Source:

75 FR 68958, Nov. 10, 2010, unless otherwise noted.

§ 1208.1

Authority and scope.

(a)

Authority.

(b)

Scope

(2) Subparts B and C of this part 1208 do not apply to

(i) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1

et seq.

et seq.

(ii) Any case to which the Contract Disputes Act (41 U.S.C. 601

et seq.

(iii) Any case where collection of a debt is explicitly provided for or provided by another statute,

e.g.

(iv) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, unless the Department of Justice authorizes FHFA to handle the collection; or

(v) Claims between agencies.

(3) Nothing in this part precludes the compromise, suspension, or termination of collection actions, where appropriate, under standards implementing the Debt Collection Improvement Act (DCIA) (31 U.S.C. 3701

et seq.

(4) Nothing in this part precludes an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or from questioning the amount or validity of a debt, in the manner set forth in this part.

§ 1208.2

Definitions.

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

Administrative offset

Agency

Centralized administrative offset

Certification

Claim or debt

(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 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

Creditor agency

Debt

Debt collection center

Debtor

Delinquent debt

Director

Disposable pay

(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 InsuranceFEGLIBasic 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 commencedwith earliest commencing offset at the top of the orderunless 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 581.102(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.,

(vii) Additional voluntary deductions (on first-come, first-served basis); and

(13) IRS paper levies.

Employee

Federal Claims Collection Standards (FCCS)

FHFA

Garnishment

Hearing official

Notice of intent

Notice of salary offset

Paying agency

Salary offset

Waiver

Withholding order

§ 1208.3

Referrals to the Department of the Treasury, collection services, and use of credit bureaus.

(a)

Referral of delinquent debts.

(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.

(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 it applies to private contractors, as well as subject to State and Federal laws governing debt collection practices.

(c)

Referrals to collection agencies.

(2) FHFA may use private collection agencies where it determines that their use is in the best interest of the Federal Government. Where FHFA determines that there is a need to contract for collection services, the contract will provide that:

(i) The authority to resolve disputes, compromise claims, suspend or terminate collection action, or refer the matter to the Department of Justice for litigation or to take any other action under this part will be retained by FHFA;

(ii) Contractors are 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. Such notice of intent may be a separate correspondence or included in correspondence demanding direct payment. 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 the manner in which FHFA will calculate the amount of these costs;

(5) An explanation that FHFA will report the debt to the consumer reporting agencies to the detriment of the debtor's credit rating; and

(6) A description of the collection actions that the agency may take in the

(b) The information that may be disclosed to the consumer reporting agency is limited to:

(1) The debtor's name, address, social security number or taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the claim; and

(3) FHFA program or activity under which the claim arose.

(c)

Subsequent reports.

(d)

Subsequent reports of delinquent debts.

(e)

Privacy Act considerations.

§§ 1208.5-1208.19

[Reserved]

Subpart BSalary Offset

§ 1208.20

Authority and scope.

(a)

Authority.

(b)

Scope.

(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.

§ 1208.21

Notice requirements before salary offset where FHFA is the creditor agency.

(a)

Notice of Intent.

(b)

Contents of Notice of Intent.

(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) 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

(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.,

(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.

(b)

Review location and time.

§ 1208.23

Opportunity for a hearing where FHFA is the creditor agency.

(a)

Request for a hearing.

Time-period for submission.

(2)

Failure to submit timely.

(3)

Contents of request.

(4)

Failure to request a hearing.

(b)

Obtaining the services of a hearing official

Debtor is not an FHFA employee.

(2)

Debtor is an FHFA employee.

(c)

Procedure

Notice of hearing.

(2)

Oral hearing.

(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 full opportunity to present evidence, witnesses, and argument;

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.

(3)

Hearing by examination of documents.

(d)

Record.

(e)

Decision.

(2) The decision of the hearing official shall be final and is considered to be an official certification regarding the existence and the amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. If the hearing official determines that a debt may not be collected by salary offset, but FHFA finds that the debt is still valid, FHFA may seek collection of the debt through other means in accordance with applicable law and regulations.

(f)

Content of decision.

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(g)

Failure to appear.

§ 1208.24

Certification where FHFA is the creditor agency.

(a)

Issuance.

(b)

Contents.

(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.

(b)

Notification of decision.

(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

(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.

(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.

§ 1208.27

Notice of salary offset where FHFA is the paying agency.

(a)

Notice.

(b)

Content of notice.

(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.

(b) Upon issuance of a proper certification by FHFA for debts owed to FHFA, or upon receipt of a proper certification from a creditor agency, FHFA shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(1) That certification has been issued by FHFA or received from another creditor agency;

(2) Of the amount of the debt and of the deductions to be made; and provided for in the certification, and

(3) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(c) Where appropriate, FHFA shall provide a copy of the notice to the creditor agency and advise such agency

(d)

Types of collection

Lump-sum payment.

(2)

Installment deductions.

(3)

Lump-sum deductions from final check.

(4)

Lump-sum deductions from other sources.

(e)

Multiple debts

(2) In the event that a debt owed FHFA is certified while an employee is subject to salary offset to repay another agency, FHFA may, at its discretion, determine whether the debt to FHFA should be repaid before the debt to the other agency is repaid, repaid simultaneously with the other debt, or repaid after the debt to the other agency.

(3) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section, as provided in 5 U.S.C. 5514(d).

§ 1208.29

Coordinating salary offset with other agencies.

(a)

Responsibility of FHFA as the creditor agency.

(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.

(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,

(b)

Responsibility of FHFA as the paying agency

Complete claim.

(2)

Incomplete claim.

(3)

Review.

(4)

Employees who transfer from one paying agency to another agency.

§ 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.

Subpart CAdministrative Offset

§ 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(c), and does not apply when debts are referred to the Department of the Treasury for mandatory centralized administrative offset under 31 CFR 901.3(b)(1).

(b) The administrative offset is in the nature of a recoupment (

i.e.,

(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

(b) An opportunity to inspect and copy the records of FHFA related to the debt that are not exempt from disclosure;

(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.

§ 1208.44

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.

§ 1208.45

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.

§ 1208.46

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.

§ 1208.47

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.

§ 1208.48

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

(iii) The agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing any required hearing or review.

(2) A determination by FHFA that collection by administrative offset against funds payable by FHFA would be in the best interest of the Federal Government as determined by the facts and circumstances of the particular case and that such administrative offset would not otherwise be contrary to law.

§ 1208.49

Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a)

Request for administrative offset.

(b)

Contents of certification.

(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 section, 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 DTax 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

(1) A debt becomes eligible for tax refund offset procedures if:

(i) It cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1);

(ii) The debt is ineligible for administrative offset or cannot be collected currently by administrative offset; and

(iii) The requirements of this section are otherwise satisfied.

(2) All judgment debts are past due for purposes of this subpart D. Judgment debts remain past due until paid in full.

Debtor

Dispute

Notice

Tax refund offset

Tax refund payment

§ 1208.52

Procedures.

(a)

Referral to the Department of the Treasury.

(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 reductions.

(b)

Notice.

(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.

(d)

Request for review.

(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

(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.

§§ 1208.54-1208.59

[Reserved]

Subpart EAdministrative Wage Garnishment

§ 1208.60

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; and

(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, the debtor must prove by a preponderance of the evidence that no debt exists, 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.,

(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 in 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

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an

employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to FHFA, FHFA may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to FHFA all amounts withheld in accordance with the withholding order issued pursuant to this section.

(f) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(h) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from FHFA to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

§ 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.

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PART 1209RULES OF PRACTICE AND PROCEDURE

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Subpart AScope and Authority

§ 1209.1

Scope.

(a)

Authority.

et seq.,

et seq.,

1

1

See

et seq.,

(b)

Enforcement Proceedings.

(c)

Rules of Practice and Procedure.

(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.

(e)

Civil money penalty inflation adjustments.

2

2

(f)

Informal proceedings.

[76 FR 53607, Aug. 26, 2011, as amended at 78 FR 37103, June 20, 2013]

§ 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

Agency

Associated with the regulated entity

Authorizing statutes

Bank Act

et seq.

Board or Board of Directors

Decisional employee

Director

Enterprise

Entity-affiliated party

Executive officer

FHFA

Notice of charges

Office of Finance

Party

Person

Presiding officer

Regulated entity

Representative of record

Respondent

Safety and Soundness Act

et seq.

Violation

Subpart BEnforcement 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);

(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)).

§ 1209.5

Cease and desist proceedings.

(a)

Cease and desist proceedings

Authority

In general.

(ii)

Hearing on the record.

(iii)

Consent to order.

(2)

Unsatisfactory rating.

(3)

Order.

(b)

Affirmative action to correct conditions resulting from violations or activities.

(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

(c)

Authority to limit activities.

(d)

Effective date of order; judicial review

Effective date.

(2)

Judicial review.

§ 1209.6

Temporary cease and desist orders.

(a)

Temporary cease and desist orders

Grounds for issuance.

(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.

(b)

Effective date of temporary order.

(c)

Incomplete or inaccurate records

Temporary order.

(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.

(d)

Judicial review.

(e)

Enforcement of temporary order.

§ 1209.7

Civil money penalties.

(a)

Civil money penalty proceedings

In general.

(2)

Amount of penalty

First Tier.

(ii)

Second Tier.

(iii)

Third Tier.

(A) Knowingly

(

1

(

2

(

3

(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

Maximum daily penalty.

(2)

Inflation Adjustment Act.

(c)

Factors in determining amount of penalty.

(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.

(d)

Review of imposition of penalty.

§ 1209.8

Removal and prohibition proceedings.

(a)

Removal and prohibition proceedings

Authority to issue order.

(2)

Applicability.

(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

(3)

Applicability to business entities.

(b)

Suspension order

Suspension or prohibition authorized.

(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.

(3)

Copy of order to be served on regulated entity.

(c)

Notice; hearing and order

Written notice.

(2)

Hearing.

See

(3)

Consent.

(4)

Issuance of order of suspension or removal.

(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.

(d)

Prohibition of certain activities and industry-wide prohibition

Prohibition of certain activities.

(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.

(3)

Relief from industry-wide prohibition at the discretion of the Director

Relief from order.

(ii)

No private right of action; no final agency action.

(4)

Violation of industry-wide prohibition.

(e)

Stay of suspension or prohibition of entity-affiliated party.

§ 1209.9

Supervisory actions not affected.

As provided by section 1311(c) of the Safety and Soundness Act (12 U.S.C. 4511(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.,

et seq.

Subpart CRules 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.

(b)

Powers.

(1)

Control the proceedings.

(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,

(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;

(10) Examine witnesses;

(11) Receive materially relevant evidence, and rule upon the admissibility of evidence or exclude, limit, or otherwise rule on offers of proof;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse himself upon his own motion or upon motion made by a party;

(14) Prepare and present to the Director a recommended decision as provided in this part;

(15) Establish time, place, and manner limitations on the attendance of the public and the media for any public hearing; and

(16) Do all other things necessary or appropriate to discharge the duties of a presiding officer.

§ 1209.12

Public hearings; closed hearings.

(a)

General rule.

sua sponte

(b)

Motion for closed hearing.

(c)

Filing documents under seal.

(d)

Procedures for closed hearing.

in camera

§ 1209.13

Good faith certification.

(a)

General requirement.

(b)

Effect of signature.

pro se

(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

(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.

§ 1209.14

Ex parte communications.

(a)

Definition

Ex parte

(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

(b)

Prohibition of ex parte communications.

ex parte

ex parte

(c)

Procedure upon occurrence of ex parte communication.

ex parte

ex parte

(d)

Sanctions.

ex parte

ex parte

(e)

Consultations by presiding officer.

ex parte

(f)

Separation of functions.

§ 1209.15

Filing of papers.

(a)

Filing.

(b)

Manner of filing.

(1)

Overnight delivery.

(2)

U.S. Mail.

(3)

Electronic media.

(c)

Formal requirements as to papers filed

Form.

1/2

(2)

Signature.

(3)

Caption.

(4)

Number of copies.

(5)

Content format.

e.g.,

©

©

©

[76 FR 53607, Aug. 26, 2011, as amended at 80 FR 80233, Dec. 24, 2015]

§ 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).

(5) Service of pleadings or other papers made by facsimile may not exceed a total page count of 30

pages. Any

(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.

(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.

(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;

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

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

(e)

Area of service.

(f)

Proof of service.

§ 1209.17

Time computations.

(a)

General rule.

(b)

When papers are deemed to be filed or served.

(i) In the case of personal service or same day reliable commercial delivery service, upon actual service;

(ii) In the case of U.S. Postal Service or reliable commercial overnight delivery service, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing; or

(iv) In the case of transmission by electronic media or facsimile, when the device through which the document was sent provides a reliable indicator that the document has been received by the opposing party, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Director or the presiding officer, or by agreement of the parties in the case of service.

(c)

Calculation of time for service and filing of responsive papers.

(1) If service was made by delivery to the U.S. Postal Service for longer than overnight delivery service by first class, registered, or certified mail, add three calendar days to the prescribed period for the responsive pleading or other filing.

(2) If service was personal, or was made by delivery to the U.S. Postal Service or any reliable commercial delivery service for overnight delivery, add one calendar-day to the prescribed period for the responsive pleading or other filing.

(3) If service was made by electronic media transmission or facsimile, add one calendar-day to the prescribed period for the responsive pleading or other filingunless otherwise determined by the Director or the presiding officer

sua sponte,

§ 1209.18

Change of time limits.

Except as otherwise by law required, the presiding officer may extend any time limit that is prescribed above or in any notice or order issued in the proceedings. After the referral of the case to the Director pursuant to § 1209.53, the Director may grant extensions of the time limits for good cause shown. Extensions may be granted on the motion of a party after notice and opportunity to respond is afforded all nonmoving parties, or on the Director's or the presiding officer's own motion.

§ 1209.19

Witness fees and expenses.

Witnesses (other than parties) subpoenaed for testimony (or for a deposition in lieu of personal appearance at a hearing) shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage shall be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where FHFA is the party requesting the

subpoena. FHFA shall not be required to pay any fees to or expenses of any witness who was not subpoenaed by FHFA.

§ 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 proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 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.

(b)

Content of answer.

(c)

Default.

§ 1209.25

Amended pleadings.

(a)

Amendments.

(b)

Amendments to conform to the 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.

(b)

Severance.

§ 1209.28

Motions.

(a)

In writing.

(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.

(c)

Filing of motions.

in limine

(d)

Responses and replies.

(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.

(f)

Dispositive motions.

§ 1209.29

Discovery.

(a)

General rule.

Limits on discovery.

e.g.,

(2)

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.

(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 in scope, or unduly burdensomeand shall be denied or modifiedif, among other things, the request:

(i) Fails to specify justifiable limitations on the relevant subject matter,

(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.

(d)

Privileged matter.

Privileged documents are not discoverable.

(ii) The parties may enter into a written agreement to permit a producing party to assert applicable privileges of a document even after its production and to request the return or destruction of privileged matter (claw back agreement). The parties shall file the claw back agreement with the presiding officer. To ensure the enforceability of the terms of any such claw back agreement, the presiding officer shall enter an order. Any party may petition the presiding officer for an order specifying claw back procedures for good cause shown.

(2)

No effect on examination authority.

(e)

Time limits.

(f)

Production.

§ 1209.30

Request for document discovery from parties.

(a)

General rule.

(1)

Limitations.

(2)

Discovery plan.

(b)

Production and costs

General rule.

(2)

Costs.

(3)

Organization.

(4)

Photocopying charges.

(5)

Electronic processing.

i.e.,

i.e.,

(c)

Obligation to update responses.

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(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.

(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.

(e)

Privilege.

(f)

Motions to compel production.

(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

Appropriate protective orders.

(2)

No stay.

(3)

Interlocutory review by the Director.

(h)

Enforcement of document discovery subpoenas

Authority.

(2)

United States district court jurisdiction.

(3)

No stay; sanctions.

§ 1209.31

Document discovery subpoenas to non-parties.

(a)

General rules

Application for subpoena.

(2)

Service of subpoena.

(3)

Presiding officer's discretion.

(b)

Motion to quash or modify

Limited appearance.

(2)

Objections.

(3)

Responses and replies.

(4)

No stay.

(c)

Enforcing document subpoenas to non-parties

Application for enforcement of subpoena.

(2)

No stay.

(3)

Sanctions.

§ 1209.32

Deposition of witness unavailable for hearing.

(a)

General rules.

duces tecum

(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.

(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.

(c)

Procedure upon deposition.

(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.

§ 1209.33

Interlocutory review.

(a)

General rule.

(b)

Scope of review.

(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.

(d)

Suspension of proceeding.

§ 1209.34

Summary disposition.

(a)

In general.

(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.

(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.

(d)

Decision on 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.

pro se,

(b)

Pre-hearing conferences.

(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;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c)

Transcript.

(d)

Scheduling or pre-hearing orders.

§ 1209.37

Pre-hearing submissions.

(a)

General.

(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.

§ 1209.38

Hearing subpoenas.

(a)

Issuance.

duces tecum

(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.

(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.

§§ 1209.39-1209.49

[Reserved]

§ 1209.50

Conduct of hearings.

(a)

General rules.

Conduct.

(2)

Order of hearing.

(3)

Examination of witnesses.

(4)

Stipulations.

(b)

Transcript.

§ 1209.51

Evidence.

(a)

Admissibility.

et seq.

(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.

(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.

(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

(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.

(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.

(f)

Depositions of unavailable witnesses.

(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.

(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.

(c)

Simultaneous filing required.

§ 1209.53

Recommended decision and filing of record.

(a)

Filing of recommended decision and record.

(b)

Filing of index.

§ 1209.54

Exceptions to recommended decision.

(a)

Filing exceptions.

(b)

Effect of failure to file or raise exceptions.

(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.

(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.

(b)

Oral argument before the Director.

(c)

Director's final decision and order.

(2) The Director shall render a final decision and issue an appropriate order within 90 days after notification to the parties that the case has been submitted for final decision, unless the Director orders that the action or any aspect thereof be remanded to the presiding officer for further proceedings. Copies of the final decision including findings of fact and an appropriate order of the Director shall be served upon each party to the proceeding and as otherwise required by statute.

(3) The Director may modify, terminate, or set aside an order in accordance with section 1373(b)(2) of the Safety and Soundness Act (12 U.S.C. 4633(b)(2)).

§ 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.

(b)

No automatic stay.

§§ 1209.58-1209.69

[Reserved]

Subpart DParties 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 sanctionscensure, suspension, or disbarmentagainst 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

§ 1209.72

Appearance and practice in adjudicatory proceedings.

(a)

Appearance before FHFA or a presiding officer

By attorneys.

(2)

By non-attorneys.

pro se.

(b)

Notice of appearance.

pro se

§ 1209.73

Conflicts of interest.

(a)

Conflict of interest in representation.

(b)

Certification and waiver.

(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.

(1) Constitutes contemptuous conduct, which includes dilatory, obstructionist, egregious, contumacious, unethical, 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 material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b)

Sanctions.

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting 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 filing on any terms that may be just; or

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c)

Procedure for imposition of sanctions.

(2) Except as provided in paragraph (d) of this section, no sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative 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 review, motions for the imposition of sanctions by any party and the imposition 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 restriction or sanction authorized by any applicable statute or regulation.

(d)

Sanctions for contemptuous conduct.

§ 1209.75

Censure, suspension, disbarment, and reinstatement.

(a)

Discretionary censure, suspension, and disbarment.

(i) Not to possess the requisite qualifications or competence to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have caused unfair and material injury or prejudice to another party, such as prejudicial delay or unnecessary expenses including attorney's fees;

(iv) To have engaged in, or aided and abetted, a material and knowing violation of the Safety and Soundness Act,

(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

(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.

(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.

(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.

(2) An application for reinstatement for good cause by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time, but not less than one year after the applicant's most recent application. An applicant for reinstatement for good cause hereunder may, in the Director's sole discretion, be afforded a hearing.

If, however, all the grounds for suspension or disbarment under paragraph (b)(1) of this section have been removed by a reversal of the order of suspension or disbarment or by termination of the underlying suspension or disbarment, any person suspended or disbarred under paragraph (b)(1) of this section may apply immediately for reinstatement and shall be reinstated by FHFA upon written application notifying FHFA that the grounds have been removed.

(e)

Conferences.

General rule.

(2)

Resignation or voluntary suspension.

(f)

Hearings under this section.

§§ 1209.76-1209.79

[Reserved]

Subpart ECivil 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 1 to § 1209.80

U.S. Code citation

Description

New adjusted

maximum

penalty

amount

12 U.S.C. 4636(b)(1)

First Tier

$13,760

12 U.S.C. 4636(b)(2)

Second Tier

68,801

12 U.S.C. 4636(b)(4)

Third Tier (Regulated Entity or Entity-Affiliated party)

2,752,048

[87 FR 80025, Dec. 29, 2022]

§ 1209.81

Applicability.

The inflation adjustments set out in § 1209.80 shall apply to civil money penalties assessed in accordance with the provisions of the Safety and Soundness Act, 12 U.S.C. 4636, and subparts B and

[87 FR 80025, Dec. 29, 2022]

§§ 1209.82-1209.99

[Reserved]

Subpart FSuspension 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 further participation in the business affairs of a regulated entity by a notice or order issued by the Director under section 1377(h) of the Safety and Soundness Act (12 U.S.C. 4636a(h)).

§ 1209.101

Suspension, removal, or prohibition.

(a)

Notice of suspension or prohibition.

(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 information, indictment, or complaint is finally disposed of, or until

terminated by the Director, or otherwise as provided in paragraph (c) of this section.

(b)

Order of removal or prohibition.

(c)

Effective period.

(d)

Effect of acquittal.

(e)

Preservation of authority.

§ 1209.102

Hearing on removal or suspension.

(a)

Hearing requests

Deadline.

(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.

(b)

Form and timing of hearing.

Informal hearing.

(2)

Setting of the hearing.

(3)

Oral testimony.

(c)

Conduct of the hearing

Hearing officer.

(2)

Submissions.

(3)

Procedures.

Fact finding authority of the hearing officer.

(ii)

Statements to an officer.

(iii)

Oral testimony.

(iv)

Written materials.

(v)

Relief.

(vi)

Ultimate question.

(4)

Record.

[76 FR 53607, Aug. 26, 2011,, as amended at 80 FR 80233, Dec. 24, 2015]

§ 1209.103

Recommended and final decisions.

(a)

Recommended decision

Written recommended decision of the hearing officer.

(2)

Five-day comment period.

(3)

Recommended decision to be transmitted to the Director.

(b)

Decision of the Director.

(c)

Effect of notice or order.

(d)

Reconsideration.

Pt. 1211

PART 1211PROCEDURES

Subpart ADefinitions

Sec.

1211.1

Definitions.

Subpart BWaivers, 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 64665, Oct. 31, 2014, unless otherwise noted.

Subpart ADefinitions

§ 1211.1

Definitions.

As used in this part:

Approval

Non-Objection Letter

Regulatory Interpretation

Requester

Waiver

Subpart BWaivers, Approvals, Non-Objection Letters, and Regulatory Interpretations

§ 1211.2

Waivers.

(a)

Authority.

(b)

Application.

§ 1211.3

Approvals.

(a)

Authority.

(b)

Requests.

(c)

Reservation.

§ 1211.4

Non-Objection Letters.

(a)

Authority.

(b)

Requests.

§ 1211.5

Regulatory Interpretations.

(a)

Authority.

(b)

Requests.

§ 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.

(a)

Filing.

(b)

Authorization.

(c)

Information requirements.

(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.

(e)

Withdrawal.

Pt. 1212

PART 1212POST-EMPLOYMENT RESTRICTION FOR SENIOR EXAMINERS

Subpart A [Reserved]

Subpart BPost-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.

Authority:

12 U.S.C. 4526, 12 U.S.C. 4517(e).

Source:

74 FR 51075, Oct. 5, 2009, unless otherwise noted.

Subpart A [Reserved]

Subpart BPost-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

Director

Employee

Federal Home Loan Bank

Bank

Office of Finance

Regulated entity

Safety and Soundness Act

Senior examiner

(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.

(b)

Effective date.

§ 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.

(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.

(c)

Procedural rights.

Pt. 1213

PART 1213OFFICE 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.

(b)

Scope.

(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

business relationship

Director

FHFA

Office of Finance

Person

person

Regulated entity

§ 1213.3

Authorities and duties of the Ombudsman.

(a)

General.

(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.

(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.

General.

(2)

Matters subject to complaint.

(b)

Appeals.

General.

(2)

Matters subject to appeal.

(3)

Matters not subject to appeal.

(4)

Effect of filing an appeal.

§ 1213.5

Complaints from a person.

(a)

General.

(b)

Matters subject to complaint.

§ 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.

Pt. 1214

PART 1214AVAILABILITY OF NON-PUBLIC INFORMATION

Sec.

1214.1

Definitions.

1214.2

Purpose and scope.

1214.3

General rule.

1214.4

Exceptions.

Authority:

5 U.S.C. 301, 552; 12 U.S.C. 4501, 4513, 4522, 4526, 4639.

Source:

78 FR 39958, July 3, 2013, unless otherwise noted.

§ 1214.1

Definitions.

Confidential supervisory information

(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

FHFA employee

Non-public information

et seq.

Federal Register.

Person

§ 1214.2

Purpose and scope.

(a)

Purpose.

(b)

Scope.

(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 U.S.C. 3401 (governing disclosure of financial institution customer information).

§ 1214.3

General rule.

(a)

In general, Non-FHFA Employees.

(b)

In general, FHFA Employees.

(c)

Persons possessing confidential supervisory information.

(d)

No Waiver.

(e)

Penalties, Confidential Supervisory Information.

(f)

Penalties, Non-Public Information.

§ 1214.4

Exceptions.

(a)

FHFA Employees.

(b)

Regulated Entity Agents and Consultants.

(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

(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.

(d)

Privilege.

Pt. 1215

PART 1215PRODUCTION OF FHFA RECORDS, INFORMATION, AND EMPLOYEE TESTIMONY IN THIRD-PARTY LEGAL PROCEEDINGS

Sec.

1215.1

Scope and purpose.

1215.2

Applicability.

1215.3

Definitions.

1215.4

General prohibition.

1215.5

Delegation.

Authority:

5 U.S.C. 301; 12 U.S.C. 4526.

Source:

78 FR 39961, July 3, 2013, unless otherwise noted.

§ 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

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

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

(3) The information:

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

(ii) Is gathered by FHFA in the course of any investigation, suspicious activity report, cease-and-desist order, civil money penalty enforcement order, suspension, removal or prohibition order, or other supervisory or enforcement orders or actions taken under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, 12 U.S.C. 4501

et seq.

(4) The inclusion of the term confidential within the definition of confidential supervisory information

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

Demand

Employee

(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

FHFA

FHFA Counsel

General Counsel

Legal proceeding

Produce

Records or information

(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

(1) The Office of Finance; and

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

Request

Testimony

§ 1215.4

General prohibition.

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

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

[78 FR 39961, July 3, 2013, as amended at 80 FR 80233, Dec. 24, 2015]

§ 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

pro-se

§ 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

(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.

(d) The Director may rely on sources of information other than those provided by the demanding or requesting parties as bases for making a determination.

(e) The Director may grant a waiver of any requirement in this section to promote a significant interest of FHFA or the United States, or for other good cause.

§ 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.

(1)

Notice of Intention to Petition for Reconsideration.

(2)

Petition for Reconsideration.

(b)

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

Ragen,

§ 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.

Pt.1217

PART 1217PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

1217.1

Purpose and scope.

Authority:

12 U.S.C. 4501; 12 U.S.C. 4526, 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812.

Source:

81 FR 43034, July 1, 2016, unless otherwise noted.

§ 1217.1

Purpose and scope.

(a)

Purpose.

(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.

§ 1217.2

Definitions.

As used in this part:

Ability to pay

Assessment

Benefit

Claim

(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

(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

Knows or has reason to know.

(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

Notice

Person

Presiding officer

Reasonable prospect of collecting an appropriate amount of penalties and assessments

Report of investigation

Respondent

Reviewing official

Statement

(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.

§ 1217.3

Basis for civil penalties and assessments.

(a)

False, fictitious or fraudulent claims.

(1) A civil penalty of not more than $13,508 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

(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 $13,508 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.

[81 FR 43034, July 1, 2016, as amended at 83 FR 43968, Aug. 29, 2018; 84 FR 9704, Mar. 18, 2019; 85 FR 4905, Jan. 28, 2020; 86 FR 7496, Jan. 29, 2021; 87 FR 1661, Jan. 12, 2022; 87 FR 80025, Dec. 29, 2022]

§ 1217.4

Investigation.

(a)

General.

(b)

Subpoena.

(c)

Investigation report.

(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.

§ 1217.5

Request for approval by the Department of Justice.

(a)

General.

(b)

Content of request.

(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.

et seq.

(b)

Notice contents.

(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.

§ 1217.7

Response.

(a)

General.

(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;

(ii) Any defense on which the respondent intends to rely;

(iii) Any reasons why the penalty and, if appropriate, any assessment should be less than the amount set forth in the notice; and

(iv) The name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b)

Failure to respond.

§ 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.

(b)

Factors to consider in determining amount of penalties and assessments.

(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.

§ 1217.10

Settlements.

(a)

General.

(b)

Failure to comply.

SUBCHAPTER BENTITY REGULATIONS

Pt. 1221

PART 1221MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

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Eligible collateral.

Authority:

7 U.S.C. 6s(e), 15 U.S.C. 78o-10(e), 12 U.S.C. 4513 and 12 U.S.C. 4526(a).

Source:

80 FR 74913, Nov. 30, 2015, unless otherwise noted.

§ 1221.1

Authority, purpose, scope, exemptions and compliance dates.

(a)

Authority.

(b)

Purpose.

(c)

Scope.

(d)

Exemptions

Swaps.

(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.

(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; or

(ii) Satisfies the criteria in section 3C(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(4)) and implementing regulations.

(e)

Compliance 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 $2.25 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 $1.5 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

(6) September 1, 2021 with respect to 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, foreign exchange forwards and foreign exchange swaps for March, April, and May 2021 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(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.

(7) September 1, 2022 with respect to 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.

(h)

Legacy swaps.

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of 12 CFR part 47, 12 CFR part

(2) The non-cleared swap or non-cleared security based swap was amended under the following conditions:

(i) The swap was originally entered into before the relevant compliance date established in paragraph (e) of this section and one party to the swap booked it at, or otherwise held it at, an entity (including a branch or other authorized form of establishment) located in the United Kingdom;

(ii) The entity in the United Kingdom subsequently arranged to amend the swap, solely for the purpose of transferring it to an affiliate, or a branch or other authorized form of establishment, located in any European Union member state or the United States, in connection with the entity's planning for or response to the event described in paragraph (h)(2)(iii) of this section, and the transferee is:

(A) A covered swap entity, or

(B) A covered swap entity's counterparty to the swap, and the counterparty represents to the covered swap entity that the counterparty performed the transfer in compliance with the requirements of paragraphs (h)(2)(i) and (ii) of this section;

(iii) The law of the European Union ceases to apply to the United Kingdom pursuant to Article 50(3) of the Treaty on European Union, without conclusion of a Withdrawal Agreement between the United Kingdom and the European Union pursuant to Article 50(2);

(iv) The amendments do not modify any of the following: The payment amount calculation methods, the maturity date, or the notional amount of the swap;

(v) The amendments cause the transfer to take effect on or after the date of the event described in paragraph (h)(2)(iii) of this section transpires; and

(vi) The amendments cause the transfer to take effect by the later of:

(A) The date that is one year after the date of the event described in paragraph (h)(2)(iii) of this

section; or

(B) Such other date permitted by transitional provisions under Article 35 of Commission Delegated Regulation (E.U.) No. 2016/2251, as amended.

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), the Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be replaced or discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also incorporate spreads or other adjustments to the replacement interest rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates. The changes may not have a longer maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap beyond what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(iii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of

this section may also be effectuated through portfolio compression between or among covered swap entities and

(4) Amendments solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties, as long as any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression do not:

(i) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap; or

(ii) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or reference, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

[80 FR 74913, 74914, Nov. 13, 2015, as amended at 83 FR 50813, Oct. 10, 2018; 84 FR 9950, Mar. 19, 2019; 85 FR 39470, 39778, July 1, 2020]

§ 1221.2

Definitions.

Affiliate.

(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.

Bank holding company

Broker

Business day

Clearing agency

Company

Counterparty

Covered swap entity

Cross-currency swap

Currency of settlement

Day of execution

(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

Depository institution

Derivatives clearing organization

Eligible collateral

Eligible master netting agreement

(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,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811

et seq.

et seq.

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit 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 of the counterparty to the extent necessary for the counterparty to comply with the

requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

(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 a defaulter, even if the defaulter or the estate of

(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

(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);

(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));

(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; or commercial mortgage 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;

(iv) 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;

(v) Any institution chartered in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001

et seq.,

(vi) 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.

(vii) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-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;

(viii) 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

(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)(iii) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(C)(iii)) and implementing regulations; or

(v) An affiliate that qualifies for the exemption from clearing pursuant to section 2(h)(7)(D) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(D)) or section 3C(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(4)) and implementing regulations.

Foreign bank

Foreign exchange forward

Foreign exchange swap

Initial margin

Initial margin collection amount

(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

(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

Major currency

(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

Market intermediary

Material swaps exposure

Multilateral development bank

Non-cleared swap

Non-cleared security-based swap

Prudential regulator

Regulated entity

Savings and loan holding company

Securities holding company

Security-based swap

Sovereign entity

State

Subsidiary.

:

(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

Swap entity

et seq.

et seq.

U.S. Government-sponsored enterprise

Variation margin

Variation margin amount

[80 FR 74913, 74914, Nov. 30, 2015, as amended at 83 FR 50813, Oct. 10, 2018]

§ 1221.3

Initial margin.

(a)

Collection of margin.

(1) Zero; or

(2) The initial margin collection amount for such non-cleared swap or non-cleared security-based swap

less

(b)

Posting of margin.

(c)

Timing.

(d)

Other counterparties.

§ 1221.4

Variation margin.

(a)

General.

(b)

Timing.

(c)

Other counterparties.

§ 1221.5

Netting arrangements, minimum transfer amount, and satisfaction of collecting and posting requirements.

(a)

Netting arrangements.

(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 collect margin, but the covered swap entity may net those non-cleared swaps and non-cleared security-based swaps 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 post margin.

(b)

Minimum transfer amount.

(c)

Satisfaction of collecting and posting requirements.

(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.

Eligible collateral.

(a)

Non-cleared swaps and non-cleared security-based swaps with a swap entity.

(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

(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) Publicly traded common equity that is included in:

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(viii) 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:

(A) The fund's investments are limited to the following:

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(B) 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; or

(ix) Gold.

(b)

Non-cleared swaps and non-cleared security-based swaps with a financial end user.

(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) 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;

(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 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 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; or

(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

(d) Notwithstanding paragraphs (a) and (b) of this section, eligible collateral for initial margin and variation margin required by this part does not include a security issued by:

(1) The party or an affiliate of the party pledging such collateral;

(2) A bank holding company, a savings and loan holding company, a U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153, a foreign bank, a depository institution, a market intermediary, a company that would be any of the foregoing if it were organized under the laws of the United States or any State, or an affiliate of any of the foregoing institutions; or

(3) 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).

(e) A covered swap entity shall monitor the market value and eligibility of all collateral collected and posted to satisfy the minimum initial margin and minimum variation margin requirements of this part. To the extent that the market value of such collateral has declined, the covered swap entity shall promptly collect or post such additional eligible collateral as is necessary to maintain compliance with the margin requirements of this part. To the extent that the collateral is no longer eligible, the covered swap entity shall promptly collect or post sufficient eligible replacement collateral to comply with the margin requirements of this part.

(f) A covered swap entity may collect or post initial margin and variation margin that is required by § 1221.3(d) or § 1221.4(c) or that is not required pursuant to this part in any form of collateral.

[80 FR 74914, Nov. 30, 2015]

§ 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 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

(1) Substitute only funds or other property that would qualify as eligible collateral under § 1221.6, and for which the amount net of applicable discounts described in appendix B of this part would be

sufficient to meet the requirements of § 1221.3; and

(2) Direct reinvestment of funds only in assets that would qualify as eligible collateral under § 1221.6, and for which the amount net of applicable discounts described in appendix B of this part would be sufficient to meet the requirements of § 1221.3.

§ 1221.8

Initial margin models and standardized amounts.

(a)

Standardized amounts.

(b)

Use of initial margin models.

(c)

Requirements for initial margin model.

(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.

(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

(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

(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.

(f)

Control, oversight, and validation mechanisms.

(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 independent of the development, implementation, and operation of the initial margin model, or the 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.

(h)

Escalation procedures.

§ 1221.9

Cross-border application of margin requirements.

(a)

Transactions to which this rule does not apply.

(b) For purposes of this section, a

foreign non-cleared swap

foreign non-cleared security-based swap

(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) A swap entity that is a subsidiary of an entity that is organized under the laws of the United States or any State.

(c) For purposes of this section, a

foreign covered swap entity

(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;

(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

Determinations and reliance.

(2)

Standard.

(3)

Covered swap entities eligible for substituted compliance.

(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.

(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.

(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.

(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

(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

(h)(1) A covered swap entity described in paragraphs (d)(3)(i) and (ii) of this section is not subject to the requirements of § 1221.3(a) or § 1221.11(a) for any non-cleared swap or non-cleared security-based swap executed with an affiliate of the covered swap entity; and

(2) For purposes of paragraph (h)(1) of this section, affiliate has the same meaning provided in § 1221.11(d).

[80 FR 74913, Nov. 30, 2015, as amended at 85 FR 39779, July 1, 2020]

§ 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 at such time as initial margin or variation margin is required to be collected or posted under § 1221.3 or § 1221.4, as applicable; 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.

[80 FR 74913, Nov. 30, 2015, as amended at 85 FR 39779, July 1, 2020]

§ 1221.11

Special rules for affiliates.

(a)(1) A covered swap entity shall calculate on each business day an initial margin collection amount for each counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity.

(2) If the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section does not exceed 15 percent of the covered swap entity's tier 1 capital, the requirements for a covered swap entity to collect initial margin under § 1221.3(a) do not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(3) On each business day that the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section exceeds 15 percent of the covered swap entity's tier 1 capital:

(i) The covered swap entity shall collect initial margin under § 1221.3(a) for each additional non-cleared swap and non-cleared security-based swap executed that business day with a

counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity, commencing on the day after execution and continuing on a daily basis as required under § 1221.3(c), until the earlier of;

(A) The termination date of such non-cleared swap or non-cleared security-based swap, or

(B) The business day on which the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section falls below 15 percent of the covered swap entity's tier 1 capital;

(ii) Notwithstanding § 1221.7(b), to the extent the covered swap entity collects initial margin pursuant to paragraph (a)(3)(i) of this section 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; and

(4) For purposes of paragraph (a) of this section, tier 1 capital means:

(i) The sum of common equity tier 1 capital as defined in 12 CFR 1240.20(b) and additional tier 1 capital as defined in 12 CFR 1240.20(c).

(5) If any subsidiary of the covered swap entity (including a subsidiary described in § 1221.9(h)) executes any non-cleared swap or non-cleared security-based swap with any counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity;

(i) The covered swap entity shall treat such non-cleared swap or security-based swap as its own for purposes of this paragraph (a); and

(ii) If the subsidiary is itself a covered swap entity, the compliance by its parent covered swap entity with this paragraph (a)(5) shall be deemed to establish the subsidiary's compliance with the requirements of this paragraph (a) and to exempt the subsidiary from the requirements for a covered swap entity to collect initial margin under § 1221.3(a) from an affiliate.

(b) 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.

(c) Section 1221.3(d) shall apply to a counterparty that is an affiliate in the same manner as it applies to any counterparty that is neither a financial end user without a material swap exposure nor a swap entity.

(d) For purposes of this section:

(1) An

affiliate

(i) An affiliate as defined in § 1221.2; or

(ii) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

(2) A

subsidiary

(i) A subsidiary as defined in § 1221.2; or

(ii) Any company that is controlled by the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

[85 FR 39779, July 1, 2020]

§ 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]

Pt. 1221, App. A

Appendix A to Part 1221Standardized Minimum Initial Margin Requirements for Non-cleared Swaps and Noncleared Security-based Swaps

Table AStandardized Minimum Gross Initial Margin Requirements for Non-cleared Swaps and Non-cleared Security-Based Swaps

1

Asset Class

Gross initial margin

(% of notional exposure)

Credit: 0-2 year duration

2

Credit: 2-5 year duration

5

Credit: 5+ year duration

10

Commodity

15

Equity

15

Foreign Exchange/Currency

6

Cross Currency Swaps: 0-2 year duration

1

Cross-Currency Swaps: 2-5 year duration

2

Cross-Currency Swaps: 5+ year duration

4

Interest Rate: 0-2 year duration

1

Interest Rate: 2-5 year duration

2

Interest Rate: 5+ year duration

4

Other

15

1

Initial Margin=0.4xGross Initial Margin +0.6x NGRxGross 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;

and

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.

Pt. 1221, App. B

Appendix B to Part 1221Margin Values for Eligible Noncash Margin Collateral.

Table BMargin Values for Eligible Noncash Margin Collateral

Asset class

Discount (%)

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

0.5

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

2.0

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 greater than five years

4.0

Eligible GSE debt securities not identified in § 1221.6(a)(2)(iv) or (b)(5): residual maturity less than one-year

1.0

Eligible GSE debt securities not identified in § 1221.6(a)(2)(iv) or (b)(5): residual maturity between one and five years:

4.0

Eligible GSE debt securities not identified in § 1221.6(a)(2)(iv) or (b)(5): residual maturity greater than five years:

8.0

Other eligible publicly traded debt: residual maturity less than one-year

1.0

Other eligible publicly traded debt: residual maturity between one and five years

4.0

Other eligible publicly traded debt: residual maturity greater than five years

8.0

Equities included in S&P 500 or related index

15.0

Equities included in S&P 1500 Composite or related index but not S&P 500 or related index

25.0

Gold

15.0

1

Pt. 1222

PART 1222APPRAISALS

Subpart ARequirements for Higher-Priced Mortgage Loans

Sec.

1222.1

Purpose and scope.

1222.2

Reservation of authority.

Subpart BAppraisal Management Company Minimum Requirements

1222.20

Authority, purpose, and scope.

1222.21

Definitions.

1222.22

Appraiser panelannual 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]

Authority:

12 U.S.C. 4501

et seq.,

Source:

78 FR 10446, Feb. 13, 2013, unless otherwise noted.

Subpart ARequirements for Higher-Priced Mortgage Loans

§ 1222.1

Purpose and scope.

This subpart cross-references the requirement that creditors extending credit in the form of higher-priced mortgage loans comply with Section 129H of the Truth-in-Lending Act (TILA), 15 U.S.C. 1639h, and its implementing regulations in Regulation Z, 12 CFR 1026.35. Neither the Banks nor the Enterprises are subject to Section 129H of TILA or 12 CFR 1026.35. Originators of higher-priced mortgage loans, including Bank members and institutions that sell mortgage loans to the Enterprises, are subject to those provisions. A failure of those institutions to comply with Section 129H of TILA and 12 CFR 1026.35 may limit their ability to sell such loans to the Banks or Enterprises or to pledge such loans to the Banks as collateral, to the extent provided in the parties' agreements.

§ 1222.2

Reservation of authority.

Nothing in this subpart A 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 and unsound practices or conditions, or violations of law. In addition, nothing in this subpart A shall be read to limit the authority of the Director to impose requirements for any purchase of higher-priced mortgage loans by an Enterprise or a Federal Home Loan Bank, or acceptance of higher-priced mortgage loans as collateral to secure advances by a Federal Home Loan Bank.

Subpart BAppraisal Management Company Minimum Requirements

Source:

80 FR 32687, June 9, 2015, unless otherwise noted.

§ 1222.20

Authority, purpose, and scope.

(a)

Authority.

et seq.,

et seq.

(b)

Purpose.

(c)

Scope.

(d)

Rule of construction.

1

1

§ 1222.21

Definitions.

For purposes of this subpart:

(a)

Affiliate

(b)

AMC National Registry

(c)(1)

Appraisal management company

(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

(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

(f)

Appraisal Subcommittee

(g)

Consumer credit

(h)

Covered transaction

(i)

Creditor

(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 shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 12 CFR 1026.32 or one or more such credit extensions through a mortgage broker.

(j)

Dwelling

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this section.

(k)

Federally regulated AMC

(l)

Federally related transaction regulations

(m)

Person

(n)

Secondary mortgage market participant

(o)

States

(p)

Uniform Standards of Professional Appraisal Practice

§ 1222.22

Appraiser panelannual 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)(iii)

(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 appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(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

(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 will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 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.

(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 the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(b)

Good moral character of owners.

(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.

§ 1222.25

Requirements for Federally regulated appraisal management companies.

(a)

Requirements in providing services.

(b)

Ownership limitations.

(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.

§ 1222.26

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.

Pt. 1223

PART 1223MINORITY AND WOMEN INCLUSION

Subpart AGeneral

Sec.

1223.1

Definitions.

Authority:

12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

Source:

75 FR 81402, Dec. 28, 2010. Redesignated at 82 FR 14994, Mar. 24, 2017, unless otherwise noted.

Subpart AGeneral

§ 1223.1

Definitions.

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

Applicant

(1) The regulated entity acted to fill a particular position;

(2) The individual followed the regulated entity's standard process for submitting an application;

(3) The individual's expression of interest indicates that the individual possesses the basic qualifications for the position; and

(4) The individual has not removed him or herself from consideration or otherwise indicated that he or she is no longer interested in the position.

Business and activities

Disability

Disabled-owned business

(1) Qualified as a Service-Disabled Veteran-Owned Small Business Concern as defined in 13 CFR 125.8 through 125.13; or

(2) More than fifty percent (50%) of the ownership or control of which is held, directly or indirectly, by one or more persons with a disability; and

(3) More than fifty percent (50%) of the net profit or loss of which accrues to one or more persons with a disability.

D&I strategic planning

Diversity spend with non-diverse-owned businesses

i.e.,

Minority

Minority-owned business

(1) More than fifty percent (50%) of the ownership or control of which is held, directly or indirectly, by one or more minority individuals; and

(2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more minority

individuals.

Prime contractor (tier 1)

Promotion

Reasonable accommodation

Subcontractor (tier 2)

Women-owned business

(1) More than fifty percent (50%) of the ownership or control of which is held, directly or indirectly, by one or more women; and

(2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more women.

[75 FR 81402, Dec. 28, 2010, as amended at 82 FR 34394, July 25, 2017]

§ 1223.2

Policy, purpose, and scope.

(a)

General policy.

(b)

Purpose.

(c)

Scope.

[75 FR 81402, Dec. 28, 2010, as amended at 82 FR 34395, July 25, 2017]

§ 1223.3

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, agencies, or entities, its officers, employees, or agents, a regulated entity, their officers, employees or agents, or any other person.

(b) The contract clause required by § 1223.21(b)(9) and the itemized data reporting on numbers of contracts and amounts involved required under §§ 1223.22 and 1223.23(b)(13) through (22) apply only to contracts for services in any amount and to contracts for goods that equal or exceed $25,000 in annual value, whether in a single contract, multiple contracts, a series of contracts or renewals of contracts, with a single vendor.

(c) Within ninety (90) days after August 24, 2017 each regulated entity shall submit to FHFA a list of the types of contracts it considers exempt under § 1223.3(b) and any thresholds, exceptions, and limitations the regulated entity establishes for the implementation

(d) Each regulated entity shall notify FHFA within thirty (30) days after any change in the types of contracts it considers exempt under § 1223.3(b) or any change in the thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1223.21(c)(2).

[75 FR 81402, Dec. 28, 2010, as amended at 82 FR 34395, July 25, 2017; 83 FR 39326, Aug. 9, 2018]

§§ 1223.4-1223.9

[Reserved]

Subpart B [Reserved]

Subpart CMinority and Women Inclusion and Diversity at Regulated Entities

§ 1223.20

Office of Minority and Women Inclusion.

(a)

Establishment.

(b)

Adequate resources.

(c)

Responsibilities.

[75 FR 81402, Dec. 28, 2010, as amended at 82 FR 34395, July 25, 2017]

§ 1223.21

Promoting diversity and ensuring inclusion in all business and activities.

(a)

Equal opportunity notice.

(b)

Policies and procedures.

(1) Confirm its adherence to the principles of equal opportunity and non-discrimination in employment and in contracting;

(2) Describe its practices and principles for prohibiting discrimination in employment and contracting;

(3) Describe its processes for giving consideration to MWDOBs when reviewing and evaluating contract proposals and hiring service providers as required under § 1223.2(c);

(4) Establish a process for receiving and attempting to resolve complaints of discrimination in employment and in contracting. Publication will include, at a minimum, making the procedure conspicuously accessible to employees and applicants through print, electronic, or alternative media formats, as necessary, and through the regulated entity's Web site;

(5) Establish a process for accepting, reviewing, and granting or denying requests for reasonable accommodations of disabilities from employees or applicants for employment;

(6) Establish a process for accepting, reviewing, and granting or denying requests for reasonable accommodations for religious beliefs or practices from employees or applicants for employment;

(7) Encourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors and engage in recruiting and outreach directed at encouraging individuals who are minorities, women and individuals with disabilities to seek or apply for employment with the regulated entity;

(8) Establish a process for developing a stand-alone D&I strategic plan or incorporating into its existing strategic plan a D&I plan that proactively focuses on promoting the advancement of D&I. The stand-alone D&I strategic plan and the incorporated D&I plan are hereinafter referred to as the

D&I strategic plan;

(9) Except as limited by § 1223.3(b), require that each contract it enters contains a material clause committing the contractor to practice the principles of equal employment opportunity and non-discrimination in all its business activities and requiring each such contractor to include the clause in each subcontract it enters for services or goods provided to the regulated entity;

(10) Identify the types of contracts the regulated entity considers exempt under § 1223.3(b) and any thresholds, exceptions, and limitations the regulated entity establishes for implementing paragraph (c)(2) of this section. The policies and procedures must describe the following:

(i) The rationale and need for the thresholds, exceptions, or limitations;

(ii) The criteria used to implement the thresholds, exceptions, or limitations; and

(iii) Any negative or adverse impact the implementation of the thresholds, exceptions, or limitations would likely have on contracting opportunities for minorities, women, individuals with disabilities, and MWDOBs;

(11) Be published and made accessible to employees, applicants for employment, contractors, potential contractors, and members of the public through print, electronic, or alternative media formats, as necessary, and through the regulated entity's Web site; and

(12) Be reviewed at the direction of the officer immediately responsible for directing the Office of Minority and Women Inclusion, or other office designated to perform the responsibilities of this part, at least annually to assess their effectiveness and to incorporate appropriate changes.

(c)

Outreach for contracting.

(1) Apply to all contracts entered into by the regulated entity, 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

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

(d)

D&I strategic planning.

(e)

Contents of the D&I strategic plan.

(1) A vision and/or mission statement that addresses the importance of promoting diversity and ensuring the inclusion of minorities, women, and individuals with disabilities in order to fulfill § 1223.2;

(2) Measurable strategic goals and objectives for accomplishing the agreed-upon priorities and intended outcomes developed to advance diversity and ensure the inclusion of minorities, women, and individuals with disabilities at the regulated entity in accordance with § 1223.2; and

(3) A requirement to create and implement action plans to achieve the strategic goals and objectives and management reporting requirements for monitoring the implementation of those goals and objectives.

[75 FR 81402, Dec. 28, 2010, as amended at 82 FR 34396, July 25, 2017; 83 FR 39326, Aug. 9, 2018]

§ 1223.22

Regulated entity reports.

(a)

General.

(1) Within 180 days after the effective date of this regulation each regulated entity and the Office of Finance shall submit to the Director or his or her designee a preliminary status report describing actions taken, plans for and progress toward implementing the provisions of 12 U.S.C. 4520 and this part; and including to the extent available the data and information required by this part to be

included in an annual report.

(2) FHFA intends to use the preliminary status report solely for the purpose of examining the submitting regulated entity or the Office of Finance and reporting to the institution on its operations and the condition of its program.

(b)

FHFA use of reports.

(c)

Frequency of reports.

(d)

Annual summary.

[75 FR 81402, Dec. 28, 2010, as amended at 80 FR 25215, May 4, 2015; 82 FR 34395, July 25, 2017]

§ 1223.23

Annual reportsformat and contents.

(a)

Format.

(b)

Contents.

(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 during the reporting year. If the regulated entity does not file Form EEO-1 or similar reports, the regulated entity shall submit to FHFA a completed Form EEO-1;

(2) All other reports or plans the regulated entity 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 applicants for employment with the regulated entity 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 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 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 applicants for promotion at the regulated entity

(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 within each occupational or job category identified on the Form EEO-1, after applying for such a promotion;

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

(9) Data showing for the reporting year by minority, gender, and disability classification

(i) The number of individuals responsible for supervising employees and/or managing the functions or departments of the regulated entity; and

(ii) A description of the strategies, initiatives, and activities executed during the preceding year to promote diverse individuals to supervisory and management roles;

(10)(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;

(11) 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 under paragraphs (b)(1) through (9) of this section, to such data as reported in the previous year together with a narrative analysis;

(12) A provision addressing the strategies, initiatives, and activities that the regulated entity has undertaken during the prior year to:

(i) Communicate with minority serving organizations to help identify ways in which it might be able to improve MWDOB business with the regulated entity by enhancing MWDOB customer access, including in affordable housing and community investment programs;

(ii) Evaluate the regulated entity's processes for identifying, considering, and selecting MWDOBs to participate in financial transactions, which evaluation shall include an assessment of the regulated entity's internal policies and practices that may have presented unique challenges to MWDOBs' participation in financial transactions of the regulated entity.

(13) Descriptions of all regulated entity 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 to inform such contractors of the regulated entity's contracting process, including the identification of any partners, organizations, or government offices with which the regulated entity participated in such outreach activity;

(14) Cumulative data separately showing the total number of contracts in place at the beginning of the reporting year as well as those entered into during the reporting year;

(15) Cumulative data separately showing the total amount paid for contracts in place at the beginning of the reporting year as well as those entered into during the reporting year;

(16) Cumulative data separately showing the total number of contracts entered into during the reporting year that were

(i) Considered exempt under § 1223.3(b);

(ii) Prime contracts (tier 1) entered into with minorities, women, individuals with disabilities, or MWDOBs;

(iii) Subcontractor (tier 2) contracts that prime contractors (tier 1) entered into with minorities, women, individuals with disabilities, or MWDOBs;

(17) Cumulative data separately showing the total amount paid for contracts entered into during the reporting year that were

(i) Considered exempt under § 1223.3(b);

(ii) To prime contractors (tier 1) that are minorities, women, individuals with disabilities, or MWDOBs in place at the beginning of the reporting year

(iii) To subcontractors (tier 2) that are minorities, women, individuals with disabilities, or MWDOBs in place at the beginning of the reporting year;

(18) Cumulative data separately showing the total diversity spend with non-diverse-owned businesses during the reporting year;

(19) The annual total of amounts paid to prime contractors (tier 1) and subcontractors (tier 2) and the percentage of which was paid separately through prime contracts and subcontracts to minorities,

women, individuals with disabilities, or MWDOBs during the reporting year;

(20) Certification of compliance with §§ 1223.20 and 1223.21, together with sufficient documentation to verify compliance;

(21) 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 that

(i) Claim employment discrimination, by basis or kind of the alleged discrimination (race, sex, disability,

etc.

(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 internal processes;

(22) Data showing for the reporting year amounts paid to claimants by the regulated entity 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;

(23) A comparison of the data reported under paragraphs (b)(13) through (19) of this section with the same information reported for the previous year;

(24) A narrative identification and analysis of the reporting year's activities the regulated entity 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

(25) A narrative identification and analysis of business activities, levels, and areas in which the regulated entity'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 expects in the succeeding year.

[75 FR 81402, Dec. 28, 2010, as amended at 80 FR 25215, May 4, 2015; 82 FR 34396, July 25, 2017; 83 FR 39326, Aug. 9, 2018]

§ 1223.24

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 activities under and in compliance with this part pursuant to 12 U.S.C. 4517.

[75 FR 81402, Dec. 28, 2010, as amended at 82 FR 34397, July 25, 2017]

§ 1223.25

Office of Finance.

All sections of this part and the standards issued under it shall apply to the Office of Finance, as defined in § 1201.1 of this chapter, in the same manner in which it applies to the regulated entities, unless the Office of Finance is otherwise specifically addressed or excluded.

[82 FR 34397, July 25, 2017]

Subparts C-Z [Reserved]

Pt. 1225

PART 1225MINIMUM CAPITALTEMPORARY INCREASE

Sec.

Authority:

12 U.S.C. 4513, 4526, and 4612.

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

Rescission

[76 FR 11674, Mar. 3, 2011, as amended at 78 FR 2323, Jan. 11, 2013; 85 FR 82198, Dec. 17, 2020]

§ 1225.3

Procedures.

(a)

Information

Information to the regulated entity or entities.

(2)

Information to the Government.

(b)

Comments.

(c)

Communication.

(d)

Written plan.

(e)

Time frame for review of temporary increase for purpose of rescission.

(2) A regulated entity or regulated entities may at any time request in writing such review by the Director.

§ 1225.4

Standards and factors.

(a)

Standard for imposing a temporary increase.

(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.

(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.

§ 1225.5

Guidances.

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.

Pt. 1227

PART 1227SUSPENDED COUNTERPARTY PROGRAM

Subpart AGeneral

Sec.

1227.1

Purpose.

1227.2

Subpart B [Reserved]

Authority:

12 U.S.C. 4513, 4513b, 4514, 4526.

Source:

78 FR 63012, Oct. 23, 2013, unless otherwise noted.

Subpart AGeneral

§ 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

(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

Affiliate

Conviction

(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

(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.

(ii)

Conduct imputed from an organization to an individual, or between individuals.

(iii)

Conduct imputed from one organization to another organization.

Covered transaction

Person

Respondent

Suspending official

Suspension

§ 1227.3

Scope of suspension orders.

(a)

General.

(b)

No effect on other actions by FHFA.

(c)

No effect on other actions by a regulated entity.

(d)

No effect on residential mortgage loans secured by respondent's own personal or household residence.

[78 FR 63012, Oct. 23, 2013, as amended at 80 FR 79680, Dec. 23, 2015]

§ 1227.4

Regulated entity reports on covered misconduct.

(a)

General.

(b)

Content of reports.

(1) Include sufficient information for FHFA to identify the person or persons that are the subject of the report, as well as any affiliates thereof if such affiliates are known to the regulated entity;

(2) Describe the nature and extent of any covered transaction that the regulated entity has or had with any persons and any affiliates thereof identified in the report; and

(3) Include a description of the covered misconduct, including the date of the covered misconduct, documents evidencing the covered misconduct if in the possession of the regulated entity, and any other relevant information that the regulated entity chooses to submit.

(c)

Timing of reports.

(2) A regulated entity may supplement the submission of any covered misconduct report by submitting additional relevant information to FHFA at any time.

[78 FR 63012, Oct. 23, 2013, as amended at 80 FR 79680, Dec. 23, 2015]

§ 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.

(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.

(d)

Content of notice.

(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.

(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

Timing of response.

(2)

Content of response.

(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

Timing of response.

(2)

Content of response.

(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

(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.

[78 FR 63012, Oct. 23, 2013, as amended at 80 FR 79680, Dec. 23, 2015]

§ 1227.6

Final suspension order.

(a)

Grounds for issuance.

(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.

(c)

Factors that may be considered by the suspending official.

(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.

(e)

Determination not to issue final suspension order.

(f)

Issuance of final suspension order

General.

(2)

Content of final suspension order.

(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.

(4)

Content of notice.

(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.

[78 FR 63012, Oct. 23, 2013, as amended at 80 FR 79680, Dec. 23, 2015]

§ 1227.7

Appeal to the Director.

(a)

Opportunity to appeal.

(b)

Decision on appeal.

(c)

Final agency action.

(d)

Exhaustion of administrative remedies.

§ 1227.8

Posting of final suspension orders.

(a)

Required posting.

(b)

Content of posting.

(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.

§ 1227.9

Request for reconsideration.

(a)

Time period for request.

(b)

Content of request.

(c)

Decision on request.

§ 1227.10

Exception to final suspension order in effect.

(a)

Request for exception.

(b)

Decision on exception.

(c)

Notice required.

Subpart B [Reserved]

Pt. 1228

PART 1228RESTRICTIONS ON THE ACQUISITION OF, OR TAKING SECURITY INTERESTS IN, MORTGAGES ON PROPERTIES ENCUMBERED BY CERTAIN PRIVATE TRANSFER FEE COVENANTS AND RELATED SECURITIES

Sec.

Authority:

12 U.S.C. 4511, 4513, 4526, 4616, 4617, 4631.

Source:

77 FR 15574, Mar. 16, 2012, unless otherwise noted.

§ 1228.1

Definitions.

For the purposes of this part, the following definitions apply:

Adjacent or contiguous property

provided that

Burdened community

Covered association

Direct benefit

Direct benefit

(1) Are conducted in or protect the burdened community or adjacent or contiguous property, or

(2) Are conducted on other property that is used primarily by residents of the burdened community.

Excepted transfer fee covenant

Private transfer fee

private transfer fee

(1) Imposed by or payable to the Federal government or a State or local government; or

(2) That defray actual costs of the transfer of the property, including transfer of membership in the relevant covered association.

Private transfer fee covenant

(1) Purports to run with the land or to bind current owners of, and successors in title to, such real property; and

(2) Obligates a transferee or transferor of all or part of the property to pay a private transfer fee upon transfer of an interest in all or part of the property, or in consideration for permitting such transfer.

Transfer

[77 FR 15574, Mar. 16, 2012, as amended at 78 FR 2323, Jan. 11, 2013]

§ 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

§ 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.

Pt. 1229

PART 1229CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION

Subpart AFederal Home Loan Banks

Sec.

1229.12

Procedures related to capital classification and other actions.

Subpart BEnterprises

1229.13

Definitions.

Authority:

12 U.S.C. 1426, 4513, 4526, 4613, 4614, 4615, 4616, 4617, 4618, 4622, 4623.

Source:

74 FR 5604, Jan. 30, 2009, unless otherwise noted.

Subpart AFederal Home Loan Banks

§ 1229.1

Definitions.

For purposes of this subpart:

Capital distribution

Class A stock

Class B stock

Critical capital level

Executive officer

(1) 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;

(2) Any other executive who occupies one of the following positions or is in charge of one of the following subject areas:

(i) Overall Bank operations, such as the Chief Operating Officer or an equivalent employee;

(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

New business activity

Permanent capital

Risk-based capital requirement

Tangible equity

Total capital

[74 FR 5604, Jan. 30, 2009, as amended at 78 FR 2323, Jan. 11, 2013; 81 FR 76295, Nov. 2, 2016]

§ 1229.2

Determination of a Bank's capital classification.

(a)

Quarterly determination.

(b)

Notification to a Bank.

(c)

Notification to the FHFA.

§ 1229.3

Criteria for a Bank's capital classification.

(a)

Adequately capitalized.

(b)

Undercapitalized.

(c)

Significantly undercapitalized.

(d)

Critically undercapitalized.

§ 1229.4

Reclassification by the Director.

(a)

Discretionary reclassification.

(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.

(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 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.

(d)

Duration.

(e)

Reservation of authority.

§ 1229.5

Capital distributions for adequately capitalized Banks.

(a)

Restriction.

(b)

Exception.

§ 1229.6

Mandatory actions applicable to undercapitalized Banks.

(a)

Mandatory Actions by the Bank.

(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.

(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; or

(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.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009; 81 FR 76295, Nov. 2, 2016]

§ 1229.7

Discretionary actions applicable to undercapitalized Banks.

(a)

Discretionary safeguards.

(b)

Procedures.

[74 FR 5604, Jan. 30, 2009, as amended at 81 FR 76295, Nov. 2, 2016]

§ 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; or

(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 the 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

(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.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009]

§ 1229.9

Discretionary actions applicable to significantly undercapitalized Banks.

(a)

Actions by the Director.

(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 of 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.

(c)

Procedures.

§ 1229.10

Actions applicable to critically undercapitalized Banks.

(a)

Appointment of conservator or receiver.

(b)

Periodic determination

Determination.

(i) 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

(ii) The Bank is not, and during the previous 60 calendar days has not been paying its debts on a regular basis as such debts become due, provided that this provision does not apply to any unpaid debts that are the subject of a

bona fide

(2)

Mandatory receivership.

(3)

Determination not required.

(c)

Judicial review.

(d)

Other applicable actions.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009]

§ 1229.11

Capital restoration plans.

(a)

Contents.

(1) Describe the actions the Bank will take, including any changes that the

(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 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.

(c)

Review of the plan by the Director.

(d)

Resubmission.

(e)

Amendments.

(f)

Effectiveness of provisions.

(g)

Appointment of conservator or receiver.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009]

§ 1229.12

Procedures related to capital classification and other actions.

(a)

Classification or reclassification of a Bank.

(b)

Notice of a supervisory action.

(c)

Bank response.

(d)

Final action.

(e)

Final actions under this section.

(f)

Judicial review.

Subpart BEnterprises

Authority:

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

Source:

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

§ 1229.13

Definitions.

For purposes of this subpart:

Capital distribution

(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.

(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.

Pt. 1230

PART 1230EXECUTIVE COMPENSATION

Sec.

Authority:

12 U.S.C. 1427, 1431(l)(5), 1452(h), 4502(6), 4502(12), 4513, 4514, 4517, 4518, 4518a, 4526, 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:

Charter acts

Compensation

Enterprise

Executive officer

(1) With respect to an Enterprise:

(i) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairman, any executive vice president, any senior vice president, any individual in charge of a principal business unit, division, or function, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

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

(2) With respect to a Bank:

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

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

(3) With respect to the Office of Finance:

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

(ii) Any other officer identified by the Director.

Reasonable and comparable

(1)

Reasonable

(i) The duties and responsibilities of the position;

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

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

(2)

Comparable

Regulated entity

§ 1230.3

Prohibition and withholding of executive compensation.

(a)

In general.

(b)

Factors to be taken into account.

(c)

Prohibition on setting compensation by Director.

(d)

Advance notice to Director of certain compensation actions.

(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:

(i) 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.

§ 1230.4

Prior approval of termination agreements of Enterprises.

(a)

In general.

(b)

Covered agreements or contracts.

1

1

(c)

Factors to be taken into account.

(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.

(e)

Effect of prior approval of an agreement or contract.

(f)

Form of approval.

§ 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.

Pt. 1231

PART 1231GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.

1231.5

Applicability in the event of receivership.

1231.6

Filing instructions.

Authority:

12 U.S.C. 4511, 4513, 4517, 4518, 4518a, 4526, and 4617.

Source:

73 FR 53357, Sept. 16, 2008, unless otherwise noted.

Editorial Note:

Nomenclature changes to part appear at 83 FR 49993, Oct. 4, 2018.

§ 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 factors that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments and agreements and by setting forth conditions for prohibited and permissible indemnification payments that regulated entities and the Office of Finance (OF) may make to affiliated parties.

[83 FR 65289, Dec. 20, 2018]

§ 1231.2

Definitions.

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

Affiliated party

(1) With respect to a golden parachute payment:

(i) Any director, officer, or employee of a regulated entity or the OF; and

(ii) Any other person as determined by the Director (by regulation or on a case-by-case basis) who participates or participated in the conduct of the affairs of the regulated entity or the OF, 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; and

(2) With respect to an indemnification payment:

(i) By the OF, any director, officer, or manager of the OF; and

(ii) By a regulated entity:

(A) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(B) 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;

(C) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant) if:

(

1

(

2

(D) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity.

Agreement

Bona fide deferred compensation plan or arrangement

(1) Whereby an 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); or

(2) That is established as a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (1) of this definition:

(i) Primarily for the purpose of providing benefits for certain 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; and

(3) In the case of any plans as described in paragraphs (1) and (2) of this definition, the following requirements shall apply:

(i) The 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;

(ii) 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);

(iii) 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 the regulated entity or the OF becoming a troubled institution;

(iv) The regulated entity or the OF 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 troubled institution's creditors in the case of insolvency; and

(v) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

Executive officer

Golden parachute payment

Indemnification payment

Individually negotiated settlement agreement

Liability or legal expense

(1) Any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(2) The amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

Payment

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of any benefit, including but not limited to stock options and stock appreciation rights; and

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

Permitted

Troubled institution

(1) Insolvent;

(2) In conservatorship or receivership;

(3) Subject to a cease-and-desist order or written agreement issued by FHFA that requires action to improve its financial condition or is subject to a proceeding initiated by the Director, which

contemplates the issuance of an order that requires action to improve its financial condition, unless otherwise informed in writing by FHFA;

(4) Assigned a composite rating of 4 or 5 by FHFA under its CAMELSO examination rating system as it may be revised from time to time;

(5) Informed in writing by the Director that it is a troubled institution for purposes of the requirements of this part on the basis of the most recent report of examination or other information available to FHFA, on account of its financial condition, risk profile, or management deficiencies; or

(6) In contemplation of the occurrence of an event described in paragraphs (1) through (5) of this definition. A regulated entity or the OF is subject to a rebuttable presumption that it is in contemplation of the occurrence of such an event during the 90 day period preceding such occurrence.

[83 FR 65289, Dec. 20, 2018]

§ 1231.3

Golden parachute payments and agreements.

(a)

In general, FHFA consent is required.

(b)

Exempt agreements and payments.

(1) Any pension or retirement plan that is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401);

(2) Any 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)), other than:

(i) Any deferred compensation plan or arrangement; and

(ii) Any severance pay plan or agreement;

(3) Any benefit plan that:

(i) Is a nondiscriminatory employee plan or program for the purposes of section 280G of the Internal

Revenue Code of 1986 (26 U.S.C. 280G) and applicable regulations; or

(ii) Has been submitted to the Director for review in accordance with this part and that the Director has determined to be nondiscriminatory, unless such a plan is otherwise specifically addressed by this part;

(4) Any bona fide deferred compensation plan or arrangement as defined in this part provided that the plan:

(i) Was in effect for, and not materially amended to increase benefits payable thereunder (except for changes required by law) within, the one-year period prior to the regulated entity or the OF becoming a troubled institution; or

(ii) Has been determined to be permissible by the Director;

(5) Any payment made by reason of:

(i) Death; or

(ii) Termination caused by disability of the affiliated party; and

(6) Any severance or similar payment that is required to be made pursuant to a state statute that is applicable to all employers within the appropriate jurisdiction (with the exception of employers that are exempt due to their small number of employees or other similar criteria).

(c)

Golden parachute payment agreements for which FHFA consent is not required.

(1) With any affiliated party where the agreement is expressly directed or established by the Director exercising authority conferred by 12 U.S.C. 4617.

(2) With an affiliated party who is not an executive officer where the agreement:

(i) Is an individually negotiated settlement agreement, and the conditions of paragraph (e)(2) of this section are met; or

(ii) Provides for a golden parachute payment that, when aggregated with all other golden parachute payments to the affiliated party, does not exceed $5,000 (subject to any adjustment for inflation pursuant to paragraph (g) of this section).

(d)

Golden parachute payments for which FHFA consent is not required.

(1) To any affiliated party where:

(i) The payment is required to be made pursuant to a permitted individually negotiated settlement agreement; or

(ii) The Director previously consented to such payment in a written notice to the troubled institution (which may be included in the Director's consent to the agreement), the payment is made in accordance with a permitted agreement, and the troubled institution has met any conditions established by the Director for making the payment.

(2) To an executive officer where the payment recognizes a significant life event and does not exceed $500 in value (subject to any adjustment for inflation pursuant to paragraph (g) of this section).

(3) To an affiliated party who is not an executive officer, where:

(i) The payment is made in accordance with a permitted agreement and the conditions of paragraph (e)(2) of this section are met; or

(ii) The payment when aggregated with other golden parachute payments to the affiliated party does not exceed $5,000 (subject to any adjustment for inflation pursuant to paragraph (g) of this section).

(e)

Required due diligence review; due diligence standard

Agreements and payments where consent is requested.

(i) Has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity or the OF that is likely to have a material adverse effect on the regulated entity or the OF;

(ii) Is substantially responsible for the regulated entity or the OF being a troubled institution;

(iii) 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 OF; or

(iv) Has violated or conspired to violate sections 215, 657, 1006, 1014, or 1344 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)

Agreements and payments permitted without the Director's consent.

(3)

Required notice to FHFA.

(f)

Factors for Director consideration.

(1) Whether, and to what degree, the affiliated party was in a position of managerial or fiduciary responsibility;

(2) The length of time the affiliated party was affiliated with the regulated entity or the OF, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of affiliation;

(3) Whether the golden parachute payment would be made pursuant to an employee benefit plan that is usual and customary;

(4) Whether the golden parachute payment or agreement is excessive or abusive or threatens the financial condition of the troubled institution; and

(5) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment or agreement, 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 affiliated party.

(g)

Adjustment for inflation.

[83 FR 62590, Dec. 20, 2018]

§ 1231.4

Indemnification payments.

(a)

Prohibited indemnification payments.

(b)

Permissible indemnification payments.

(1) Premiums for any commercial insurance policy or fidelity bonds for directors and officers, to the extent that the insurance or fidelity bond covers expenses and restitution, but not a judgment in favor of FHFA or a civil money penalty imposed by FHFA.

(2) Expenses of defending an action, subject to the affiliated party's agreement to repay those expenses if the affiliated party either:

(i) When the proceeding results in a final and non-reviewable order, is found culpable for violating a law or regulation that is the basis for the charges to which the expenses specifically relate; or

(ii) Enters into a settlement of those charges in which the affiliated party admits culpability with respect to them; or

(iii) Is subject to a final and non-reviewable prohibition order under 12 U.S.C. 4636a.

(3) Amounts due under an indemnification agreement entered into with a named affiliated party on or prior to September 20, 2016.

(c)

Process; factors.

(1) The board of directors of the regulated entity or the OF must conduct a due investigation and make a written determination in good faith that:

(i) The affiliated party acted in good faith and in a manner that he or she reasonably believed to be in the best interests of the regulated entity or the OF; and

(ii) Such payments will not materially adversely affect the safety and soundness of the regulated entity or the OF.

(2) The affiliated party may not participate in the board's deliberations or decision.

(3) If a majority of the board are respondents in the action, the remaining board members may approve payment after obtaining a written opinion of outside counsel that the conditions of this regulation have been met.

(4) If all of the board members are respondents, they may approve payment after obtaining a written opinion of outside counsel that the conditions of this regulation have been met.

(d)

Scope.

[83 FR 49993, Oct. 4, 2018]

§ 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. Any consent or approval granted under the provisions of this part by FHFA shall not in any way obligate FHFA as receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification, or other agreement, or otherwise improve any claim of any affiliated party on or against FHFA as receiver. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of an affiliated party contrary to section 1318(e)(3) of the Safety and Soundness Act (12 U.S.C. 4518(e)(3)).

[83 FR 65291, Dec, 20, 2018]

§ 1231.6

Filing instructions.

(a)

Scope.

(b)

Where to file.

(c)

Content of a request for FHFA consent.

(1) Be in writing;

(2) State the reasons why the troubled institution seeks to enter into the agreement or make the payment;

(3) Identify the affiliated party or describe of the class or group of affiliated parties who would receive or be eligible to receive payment;

(4) Include a copy of any agreement, including any plan document, contract, other agreement or policy regarding the subject matter of the request;

(5) State the cost of the proposed payment or payments, and the impact on the capital and earnings of the troubled institution;

(6) State the reasons why consent to the agreement or payment, or to both the agreement and payment, should be granted;

(7) For any plan that the troubled institution believes is a nondiscriminatory benefit plan, other than a plan covered by § 1231.3(b)(3)(i), state the basis for the conclusion that the plan is nondiscriminatory;

(8) For any bona fide deferred compensation plan or arrangement, state whether the plan would be exempt under this part but for the fact that it was either established or materially amended to increase benefits payable thereunder (except for changes required by law) within the one-year period prior to the regulated entity or the OF becoming a troubled institution;

(9) For any agreement with an individual affiliated party, or for any payment, either:

(i) State that the troubled institution is reasonably assured that the affiliated party has not engaged in any of the actions listed in § 1231.3(e)(1)(i) through (iv), or,

(ii) If the troubled institution is not reasonably assured that the affiliated party has not engaged in any of the actions listed in § 1231.3(e)(1)(i) through (iv) but nonetheless wishes to request consent, describe the results of its due diligence and, in light of those results, the reason why consent to the agreement or payment should be granted.

(d)

FHFA decision on a request.

(e)

Content of notice to FHFA.

(1) Be in writing;

(2) Identify the affiliated party who would receive or be eligible to receive payment;

(3) Include a copy of any agreement or policy regarding the subject matter of the request; and

(4) State each reason why the troubled institution cannot meet the standard set forth in § 1231.3(e)(2).

(f)

Waiver of form or content requirements.

(g)

Additional information.

[83 FR 65291, Dec. 20, 2018]

Pt. 1233

PART 1233REPORTING OF FRAUDULENT FINANCIAL INSTRUMENTS

Sec.

Protection from liability for reports.

1233.6

Supervisory action.

Authority:

12 U.S.C. 4511, 4513, 4514, 4526, 4642.

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

(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

Fraud

Possible fraud

Purchased or sold or relating to the purchase or sale

[75 FR 4258, Jan. 27, 2010, as amended at 78 FR 2323, Jan. 11, 2013]

§ 1233.3

Reporting.

(a)

Timeframe for reporting.

(2) In addition to submitting a report in accordance with paragraph (a)(1) of this section, in any situation that would have a significant impact on the regulated entity, the regulated entity shall immediately report any fraud or possible fraud to the Director by telephone or electronic communication.

(b)

Format for reporting.

(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.

(d)

Nondisclosure.

(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.

§ 1233.4

Internal controls, policies, procedures, and training.

(a)

In general.

(b)

Examination.

§ 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.

Pt. 1234

PART 1234CREDIT RISK RETENTION

Subpart AAuthority, Purpose, Scope and Definitions

Sec.

1234.1

Purpose, scope and reservation of authority.

1234.2

Definitions.

Subpart BCredit Risk Retention

1234.3

Base risk retention requirement.

1234.4

Standard risk retention.

1234.5

Revolving pool securitizations.

1234.6

Eligible ABCP conduits.

1234.7

Commercial mortgage-backed securities.

1234.8

Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS.

1234.9

Open market CLOs.

1234.10

Qualified tender option bonds.

Subpart CTransfer of Risk Retention

1234.11

Allocation of risk retention to an originator.

1234.12

Hedging, transfer and financing prohibitions.

Subpart DExceptions and Exemptions

1234.13

Exemption for qualified residential mortgages.

1234.14

Definitions applicable to qualifying commercial real estate loans.

1234.15

Qualifying commercial real estate loans.

1234.16

[Reserved]

1234.17

Underwriting standards for qualifying CRE loans.

1234.18

[Reserved]

1234.19

General exemptions.

1234.20

Safe harbor for certain foreign-related transactions.

1234.21

Additional exemptions.

1234.22

Periodic review of the QRM definition, exempted three-to-four unit residential mortgage loans, and community-focused residential mortgage exemption.

Authority:

12 U.S.C. 4511(b), 4526, 4617; 15 U.S.C. 78o-11(b)(2).

Source:

79 FR 77740, Dec. 24, 2014, unless otherwise noted.

Subpart AAuthority, Purpose, Scope and Definitions

§ 1234.1

Purpose, scope and reservation of authority.

(a)

Purpose.

(b)

Scope.

(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.

[79 FR 77765, Dec. 24, 2014]

§ 1234.2

Definitions.

For purposes of this part, the following definitions apply:

ABS interest

(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

affiliated

Appropriate Federal banking agency

Asset

Asset-backed security

Collateral

collateralize

Commercial real estate loan

Commission

Control

(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

(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

Depositor

(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

(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

(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

Eligible vertical interest

Federal banking agencies

GAAP

Issuing 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

Originator

(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

Residential mortgage

(1) A transaction that is a covered transaction as defined in § 1026.43(b) of Regulation Z (12 CFR 1026.43(b)(1));

(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

Securitization transaction

Securitized asset

(1) Is transferred, sold, or conveyed to an issuing entity; and

(2) Collateralizes the ABS interests issued by the issuing entity.

Securitizer

(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

Servicing assets

Single vertical security

Sponsor

State

United States or U.S.

Wholly-owned affiliate

Subpart BCredit Risk Retention

§ 1234.3

Base risk retention requirement.

(a)

Base risk retention requirement.

(b)

Multiple sponsors.

§ 1234.4

Standard risk retention.

(a)

General requirement.

(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.

(1) The account is held by the trustee (or person performing similar functions) in the name and for the benefit of the issuing entity;

(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:

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(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.

(1)

Horizontal interest.

(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;

(C) 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:

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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

(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.

(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 form of the eligible vertical interest;

(B) The percentage that the sponsor is required to retain as a vertical interest under this section; and

(C) A description of the material terms of the vertical interest and the amount that the sponsor expects to retain at the closing of the securitization transaction.

(ii) A reasonable time after the closing of the securitization transaction, the amount of the vertical interest the sponsor retained at closing, if that amount is materially different from the amount disclosed under paragraph (c)(2)(i) of this section.

(d)

Record maintenance.

§ 1234.5

Revolving pool securitizations.

(a)

Definitions.

Revolving pool securitization

Seller's interest

(1) 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

(2) That is

pari passu

(3) That adjusts for fluctuations in the outstanding principal balance of the securitized assets in the pool.

(b)

General requirement.

(c)

Measuring the seller's interest.

(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;

(2) The aggregate unpaid principal balance of outstanding investor ABS interests in the denominator of the 5 percent ratio may be reduced by the amount of funds held in a segregated principal accumulation account for the repayment 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; and

(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.

(e)

Holding and retention of the seller's interest; legacy trusts.

(2) If one revolving pool securitization issues collateral certificates 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.

(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 of amounts received on securitized assets.

(g)

Combined seller's interests and horizontal interest retention.

(h)

Residual ABS interests in excess interest and fees.

(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;

(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.

(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.

(1) The sponsor describes the specified dates in the disclosures required by paragraph (k) of this section; and

(2) The dates are no more than 60 days prior to the date of first use with investors of disclosures required for the interest by paragraph (k) of this section, or for revolving pool securitizations that make distributions to investors on a quarterly or less frequent basis, no more than 135 days prior to the date of first use with investors of such disclosures.

(k)

Disclosure and record maintenance.

Disclosure.

(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).

(2)

Adjusted data.

(3)

Record maintenance.

(l)

Early amortization of all outstanding series.

(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

(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.

100 percent liquidity coverage

ABCP

ABCP conduit

Eligible 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 originated by an

originator-seller and by servicing assets; or

(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

Intermediate SPV

(1) (i) Is a direct or indirect wholly-owned affiliate of the originator-seller; or

(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) 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

Regulated liquidity provider

(1) A depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(2) A bank holding company (as defined in 12 U.S.C. 1841), or a subsidiary thereof;

(3) A savings and loan holding company (as defined in 12 U.S.C. 1467a), provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k), or a subsidiary thereof; or

(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.

(b)

In general.

(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,

(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.

(d)

Disclosures

Periodic disclosures to 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.

(e)

Sale or transfer of ABS interests between eligible ABCP conduits.

(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.

(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:

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(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.

Special servicer

(b)

Third-party purchaser.

(1)

Number of third-party purchasers.

pari passu

(2)

Composition of collateral.

(3)

Source of funds.

(ii) No third-party purchaser obtains financing, directly or indirectly, for the purchase of such interest 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, depositor, 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.

(4)

Third-party review.

(5)

Affiliation and control rights.

(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.

(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:

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(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:

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(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.

(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 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.

(8)

Hedging, transfer and pledging

General rule.

(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

(B) the issuing entity has an obligation to release its lien on the loan.

(ii)

Exceptions

Transfer by initial third-party purchaser or sponsor.

(B)

Transfer by subsequent third-party purchaser.

(C)

Requirements applicable to subsequent third-party purchasers.

(c)

Duty to comply.

(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.

(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.

(c)

Disclosure.

§ 1234.9

Open market CLOs.

(a)

Definitions.

CLO

(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

CLO manager

et seq.

Commercial borrower

Initial loan syndication transaction

Lead arranger

(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

(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

(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

Secondary market transaction

Senior, secured syndicated loan

(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 (in the commercially reasonable judgment of the CLO manager exercised at the time of investment) to repay the loan and to repay all other indebtedness of equal seniority secured by such first priority security interest or lien in or on the same collateral, and the CLO manager certifies, on or prior to each date that it acquires a loan constituting part of a new CLO-eligible tranche, that it has policies and procedures to evaluate the likelihood of repayment of loans acquired by the CLO and it has followed such policies and procedures in evaluating each CLO-eligible loan tranche.

(b)

In general.

(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 arms-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.

(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

(3) The pro rata provisions, voting provisions, and similar provisions applicable to the security associated with such CLO-eligible loan tranches under the CLO credit agreement and any intercreditor or other applicable agreements governing such CLO-eligible

(d)

Disclosures.

(1)

Open market CLOs.

(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.

§ 1234.10

Qualified tender option bonds.

(a)

Definitions.

Municipal security

municipal securities

Qualified tender option bond entity

(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

(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

(b)

Risk retention options.

(1) An eligible vertical interest or an eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of § 1234.4; or

(2) An interest that meets the requirements set forth in paragraph (c) of this section; or

(3) A municipal security that meets the requirements set forth in paragraph (d) of this section; or

(4) Any combination 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.

(d)

Retention of a municipal security outside of the qualified tender option bond entity.

(e)

Disclosures.

(1) The name and form of organization of the qualified tender option bond entity;

(2) A description of the form and subordination features of such retained interest in accordance with the disclosure obligations in § 1234.4(c);

(3) To the extent any portion of the retained interest is claimed by the sponsor as an eligible horizontal residual interest (including any interest held in compliance with § 1234.10(c)), the fair value of that interest (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and as a dollar amount);

(4) To the extent any portion of the retained interest is claimed by the sponsor as an eligible vertical interest (including any interest held in compliance with § 1234.10(c)), the percentage of ABS interests issued represented by the eligible vertical interest; and

(5) To the extent any portion of the retained interest claimed by the sponsor is a municipal security held outside of the qualified tender option bond entity, the name and form of organization of the qualified tender option bond entity, the identity of the issuer of the municipal securities, the face value of the municipal securities deposited into the qualified tender option bond entity,

(f)

Prohibitions on Hedging and Transfer.

Subpart CTransfer of Risk Retention

§ 1234.11

Allocation of risk retention to an originator.

(a)

In general.

(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.

(2)

Disclosures.

e.g.,

(3)

Hedging, transferring and pledging.

(b)

Duty to comply.

(2) A retaining sponsor relying on this section:

(i) Shall maintain and adhere to policies and procedures that are reasonably designed to monitor the compliance by

(ii) In the event the sponsor determines that any such originator no longer complies with any of the requirements in paragraphs (a)(1) and (3) 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 originator.

§ 1234.12

Hedging, transfer and financing prohibitions.

(a)

Transfer.

(b)

Prohibited hedging by sponsor and affiliates.

(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 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.

(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 for the 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.

(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,

(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.

(f)

Duration of the hedging and transfer restrictions

General rule.

(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;

(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.

(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 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.

(i) 12 U.S.C. 1811;

(ii) 12 U.S.C. 1787;

(iii) 12 U.S.C. 4617; or

(iv) 12 U.S.C. 5382.

(4)

Revolving pool securitizations.

Subpart DExceptions and Exemptions

§ 1234.13

Exemption for qualified residential mortgages.

(a)

Definitions.

Currently performing

Qualified residential mortgage

(b)

Exemption.

(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 a reasonable period of time prior to the sale of asset-backed securities 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.

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 loans 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

§ 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

Combined loan-to-value (CLTV) ratio

(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)(ii).

Commercial real estate (CRE) loan

(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

(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

First lien

Junior lien

Loan-to-value (LTV) ratio

(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)(ii).

Net operating income (NOI)

Operating affiliate

Purchase money security interest

Qualifying leased CRE loan

(1) That is occupied by one or more qualified tenants pursuant to a lease agreement with a term of no less than one (1) month; and

(2) Where no more than 20 percent of the aggregate gross revenue of the property is payable from one or more tenants who:

(i) Are subject to a lease that will terminate within six months following the date of origination; or

(ii) Are not qualified tenants.

Qualifying multi-family loan

(1) That consists of five or more dwelling units (including apartment buildings, condominiums, cooperatives and other similar structures) primarily for residential use; and

(2) Where at least 75 percent of the NOI is derived from residential rents and tenant amenities (including income from parking garages, health or swim clubs, and dry cleaning), and not from other commercial uses.

Rental income

(1) Income derived from a lease or other occupancy agreement between the borrower or an operating affiliate of the borrower and a party which is not an affiliate of the borrower for the use of real property or improvements serving as collateral for the applicable loan; and

(2) Other income derived from hotel, motel, dormitory, nursing home, assisted living, mini-storage warehouse or similar properties that are used primarily by parties that are not affiliates or employees of the borrower or its affiliates.

Replacement reserve

Uniform Standards of Professional Appraisal Practice (USPAP)

[79 FR 77740, Dec. 24, 2014, as amended at 79 FR 77765, Dec. 24, 2014]

§ 1234.15

Qualifying commercial real estate loans.

(a)

General exception.

(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.

(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;

(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 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.

(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.

(i) An enforceable first lien, documented and recorded appropriately pursuant to applicable law, on the commercial real estate and improvements;

(ii)(A) An assignment of:

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(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 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;

(2) Prior to origination of the CRE loan, the originator:

(i) Verified and documented the current financial condition of the borrower and each operating affiliate;

(ii) 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 requirements

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(C) Provides an as is opinion of the market value of the real property, which includes an income approach;

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(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) over the term of the loan, not exceeding 25 years, or 30 years for a qualifying multi-family property;

(iv) Conducted an environmental risk assessment to gain environmental information about the

property securing the loan and took appropriate steps to mitigate any environmental liability determined to exist based on this assessment;

(v) Conducted an analysis of the borrower's ability to service its overall debt obligations during the next two years, based on reasonable projections (including operating income projections for the property);

(vi)(A) Determined that based on the two years' actual performance immediately preceding the origination of the loan, the borrower would have had:

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(B) If the borrower did not own the property for any part of the last two years prior to origination, the calculation of the DSC ratio, for purposes of paragraph (a)(2)(vi)(A) of this section, shall include the property's operating income for any portion of the two-year period during which the borrower did not own the property;

(vii) Determined that, based on two years of projections, which include the new debt obligation, following the origination date of the loan, the borrower will have:

(A) A DSC ratio of 1.5 or greater, if the loan is a qualifying leased CRE loan, net of any income derived from a tenant(s) who is not a qualified tenant(s);

(B) A DSC ratio of 1.25 or greater, if the loan is a qualifying multi-family property loan; or

(C) A DSC ratio of 1.7 or greater, if the loan is any other type of CRE loan.

(3) The loan documentation for the CRE loan includes covenants that:

(i) Require the borrower to provide the borrower's financial statements and supporting schedules to the 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

(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:

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(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 proffers 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

(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.

(5) 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.

(iii) If the appraisal required under paragraph (a)(2)(ii) of this section included a direct capitalization method using an overall capitalization rate,

(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

(11) 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, as of the time that the security interest of the originator in the property described in paragraph (a)(1)(iii) of this section was perfected, other higher priority liens of record on any property described in paragraph (a)(1)(iii) of this section, other than purchase money security interests.

(b)

Cure or buy-back requirement.

(1) The failure of the loan to meet any of the requirements set forth in paragraphs (a)(1) through (9) and (a)(11) of this section is not material; or;

(2) No later than 90 days after the determination that the loan does not meet one or more of the

requirements

(i) Effectuates cure, restoring conformity of the loan to the unmet requirements as of the date of cure; or

(ii) Repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) as of the date of repurchase.

(3) If the sponsor cures or repurchases pursuant to paragraph (b)(2) of this section, the sponsor must promptly notify, or cause 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 required to be cured or repurchased by the sponsor pursuant to paragraph (b)(2) of this section, including the principal amount of such repurchased loan(s) and the cause for such cure or repurchase.

§ 1234.18

[Reserved]

§ 1234.19

General exemptions.

(a)

Definitions.

Community-focused residential mortgage

First pay class

Inverse floater

Qualifying three-to-four unit residential mortgage loan

(i) Secured by a dwelling (as defined in 12 CFR 1026.2(a)(19)) that is owner occupied and contains three-to-four housing units;

(ii) 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

(iii) 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.

(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

(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.

(3)

State and municipal securitizations.

(4)

Qualified scholarship funding bonds.

(5)

Pass-through resecuritizations.

(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.

(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.

(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

(A) With respect to asset-backed securities collateralized by residential mortgages, a loan that has been outstanding and performing for the longer of:

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(B) With respect to all other classes of asset-backed securities, a loan that has been outstanding and performing for the longer of:

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(8)

Certain public utility securitizations.

(ii) For purposes of this paragraph:

(A)

Specified cost

(B)

Specified cost recovery legislation

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(c)

Exemption for securitizations of assets issued, insured or guaranteed by the United States.

(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.

(e)

Reduced requirement for certain student loan securitizations.

(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.

(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.

(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.

§ 1234.20

Safe harbor for certain foreign-related transactions.

(a)

Definitions.

U.S. person

(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

(H) Any partnership, corporation, limited liability company, or other organization or entity if:

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(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

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(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:

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(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.

(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.

§ 1234.21

Additional exemptions.

(a)

Securitization transactions.

(b)

Exceptions, exemptions, and adjustments.

§ 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

Federal Register

Pt. 1235

PART 1235RECORD RETENTION FOR REGULATED ENTITIES AND OFFICE OF FINANCE

Sec.

Authority:

12 U.S.C. 4511(b), 4513(a), 4513b(a)(10) and (11), 4526.

Source:

76 FR 33127, June 8, 2011, unless otherwise noted.

§ 1235.1

Purpose and scope.

The purpose of this part is to set forth minimum requirements for a record retention program for each regulated entity and the Office of Finance. The requirements are intended to further prudent management as well as to ensure that complete and accurate records of each regulated entity and the Office of Finance are readily accessible to FHFA.

§ 1235.2

Definitions.

For purposes of this part, the term

Electronic record

E-mail

Employee

Record

(1) Form or format, including hard copy documents (

e.g.,

e.g.,

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

(3) Whether the information is maintained or used on regulated entity or Office of Finance equipment, or on personal or home computer systems of an employee; or

(4) Whether the information is active or inactive.

Record hold

Record retention schedule

Retention period

[76 FR 33127, June 8, 2011, as amended at 78 FR 2324, Jan. 11, 2013]

§ 1235.3

Establishment and evaluation of a record retention program.

(a)

Establishment.

(b)

Evaluation.

§ 1235.4

Minimum requirements of a record retention program.

(a)

General minimum requirements.

(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.

(c)

Communication and training

(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.

(b)

Notification by a regulated entity or the Office of Finance.

(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

(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,

(c)

Method of record retention during a record hold.

(d)

Access to and retrieval of records during a record hold.

§ 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.

(b)

No limitation of authority.

Pt. 1236

PART 1236PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS

Sec.

1236.1

Purpose.

1236.2

Definitions.

1236.3

Prudential standards as guidelines.

1236.4

Failure to meet a standard; corrective plans.

1236.5

Failure to submit a corrective plan; noncompliance.

Appendix to Part 1236Prudential Management and Operations Standards

Authority:

12 U.S.C. 4511, 4513(a) and (f), 4513b, and 4526.

Source:

77 FR 33959, June 8, 2012, unless otherwise noted.

§ 1236.1

Purpose.

This part establishes the prudential management and operations standards that are required by 12 U.S.C. 4513b and the processes by which FHFA can notify a regulated entity of its failure to operate in accordance with the standards and can direct the entity to take corrective action. This part further specifies the possible consequences for any regulated entity that fails to operate in accordance with the standards or otherwise fails to comply with this part.

§ 1236.2

Definitions.

Unless otherwise indicated, terms used in this part have the meanings that they have in the Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4501

et seq.,

et seq.

Extraordinary growth

(i) With respect to a Bank, growth of non-advance assets in excess of 30 percent over the six calendar quarter period preceding the date on which FHFA notified the Bank that it was required to submit a corrective plan; and

(ii) With respect to an Enterprise, quarterly non-annualized growth of assets in excess of 7.5 percent in any calendar quarter during the six calendar quarter period preceding the date on which FHFA notified the Enterprise that it was required to submit a corrective plan.

(2) For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved by FHFA are not to be included.

Standards

[77 FR 33959, June 8, 2012, as amended at 78 FR 2324, Jan. 11, 2013; 80 FR 72336, Nov. 19, 2015]

§ 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.

(b)

Submission of corrective plan.

(c)

Corrective plans

Contents of plan.

(2)

Filing deadline

In general.

(ii)

Other plans.

(d)

Amendment of corrective plan.

(e)

Review of corrective plans and amendments.

§ 1236.5

Failure to submit a corrective plan; noncompliance.

(a)

Remedies.

(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.

(c)

Orders

Notice.

(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. 4513b(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.

(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.

(4)

Immediate issuance of final order.

(d)

Request for modification or rescission of order.

(e)

Agency review and determination.

(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 1236Prudential 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 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

6. Senior management should ensure that the regulated entity has adequate resources, systems and controls available to execute effectively the entity's business strategies, policies and procedures, including operating consistently with each of the Standards.

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 risk exposures that is sufficient in detail and timeliness to permit the board of directors to understand and assess the performance of management in identifying and managing the various risks to which the regulated entity is exposed.

Responsibilities of the Board of Directors and Senior Management

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 ensure that the regulated entity's overall risk profile is aligned with its mission objectives.

Standard 1Internal Controls and Information Systems

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.

Responsibilities of Senior Management

2. Regarding internal controls and information systems, senior management should implement strategies and policies approved by the board of directors, establish appropriate policies, monitor the adequacy and effectiveness of this function, and 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 should monitor the adequacy and effectiveness of its internal controls and information systems on an ongoing basis through a formal self-assessment process.

6. The regulated entity should have an organizational culture that emphasizes and demonstrates to personnel at all levels the importance of internal controls.

7. The regulated entity should address promptly any violations, findings, weaknesses, deficiencies, and other issues in need of remediation relating to the internal control systems.

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.,

Standard 2Independence 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.,

Standard 3Management 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 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

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.,

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.,

Standard 4Management of Market RiskMeasurement 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

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

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e.g.,

Standard 5Adequacy 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.,

Standard 6Management 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 complies with all applicable laws, regulations, and supervisory guidance (

e.g.,

Standard 7Investments 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.,

Standard 8Overall 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

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 facilitates 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.,

Standard 9Management 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.,

Standard 10Maintenance 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.,

[77 FR 33959, June 8, 2012, as amended at 80 FR 72336, Nov. 19, 2015]

Pt. 1237

PART 1237CONSERVATORSHIP AND RECEIVERSHIP

Authority:

12 U.S.C. 4513b, 4526, 4617.

Source:

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

§ 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:

Agency

Authorizing statutes

(1) The Federal National Mortgage Association Charter Act,

(2) The Federal Home Loan Mortgage Corporation Act, and

(3) The Federal Home Loan Bank Act.

Capital distribution

Compensation

Conservator

Default; in danger of default:

(1)

Default

(2)

In danger of default

Entity-affiliated party

Equity security

Executive officer

Golden parachute payment

Limited-life regulated entity

Receiver

Securities litigation claim

Transfer

[76 FR 35733, June 20, 2011, as amended at 78 FR 2324, Jan. 11, 2013; 80 FR 72336, Oct. 22, 2015]

Subpart APowers

§ 1237.3

Powers of the Agency as conservator or receiver.

(a)

Operation of the regulated entity.

(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.

(c)

Powers as conservator or receiver.

(d)

Transfer or sale of assets and liabilities.

§ 1237.4

Receivership following conservatorship; administrative expenses.

If a receivership immediately succeeds a conservatorship, the administrative expenses of the conservatorship shall also be deemed to be administrative expenses of the subsequent receivership.

§ 1237.5

Contracts entered into before appointment of a conservator or receiver.

(a) The conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease to which such regulated entity is a party pursuant to section 1367(d) of the Safety and Soundness Act.

(b) For purposes of section 1367(d)(2) of the Safety and Soundness Act, a reasonable period shall be defined as a period of 18 months following the appointment of a conservator or receiver.

§ 1237.6

Authority to enforce contracts.

The conservator or receiver may enforce any contract entered into by the regulated entity pursuant to the provisions and subject to the restrictions of section 1367(d)(13) of the Safety and Soundness Act.

Subpart BClaims

§ 1237.7

Period for determination of claims.

Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim. This period may be extended by a written agreement between the claimant and the Agency as receiver, which may include an agreement to toll any applicable statute of limitations.

§ 1237.8

Alternate procedures for determination of claims.

Claimants seeking a review of the determination of claims may seek alternative dispute resolution from the Agency as receiver in lieu of a judicial determination. The Director may by order, policy statement, or directive establish alternative dispute resolution procedures for this purpose.

§ 1237.9

Priority of expenses and unsecured claims.

(a)

General.

(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,

(b)

Similarly situated creditors.

(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 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.

Subpart CLimited-Life Regulated Entities

§ 1237.10

Limited-life regulated entities.

(a)

Status.

(b)

Investment authority.

(c)

Policies and procedures.

§ 1237.11

Authority of limited-life regulated entities to obtain credit.

(a)

Ability to obtain credit.

(b)

Inability to obtain credit.

(c)

Limitations.

(d)

Adequate protection.

(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 such 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 DOther

§ 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;

(2) Will contribute to the long-term financial safety and soundness of the regulated entity;

(3) Is otherwise in the interest of the regulated entity; or

(4) Is otherwise in the public interest.

(c) This section is intended to supplement and shall not replace or affect any other restriction on capital distributions imposed by statute or regulation.

§ 1237.13

Payment of Securities Litigation Claims while in conservatorship.

(a)

Payment of Securities Litigation Claims while in conservatorship.

(b)

Claims against limited-life regulated entities.

§ 1237.14

Golden parachute payments [Reserved]

Pt. 1238

PART 1238STRESS TESTING OF REGULATED ENTITIES

Sec.

1238.1

Authority and purpose.

1238.2

Definitions.

1238.3

Annual stress test.

1238.4

Methodologies and practices.

1238.5

Required report to FHFA and the FRB of stress test results and related information.

1238.6

Post-assessment actions by the Enterprises.

1238.7

Publication of results by regulated entities.

1238.8

Additional implementing action.

Authority:

12 U.S.C. 1426; 4513; 4526; 4612; 5365(i).

Source:

78 FR 59222, Sept. 26, 2013, unless otherwise noted.

§ 1238.1

Authority and purpose.

(a)

Authority.

(b)

Purpose.

(2) This part establishes requirements that apply to each Enterprise's performance of periodic stress tests. The purpose of the periodic stress test is to provide the Enterprises, FHFA, and the FRB with additional, forward-looking information that will help them to assess capital adequacy at the Enterprises under various scenarios; to review the Enterprises' stress test results; and to increase public disclosure of the Enterprises' capital condition by requiring broad dissemination of the stress test scenarios and results.

[85 FR 16529, Mar. 24, 2020]

§ 1238.2

Definitions.

For purposes of this part, the following definitions apply:

Planning horizon

Scenarios

Stress test

[85 FR 16530, Mar. 24, 2020]

§ 1238.3

Annual stress test.

(a)

In general.

(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 a supplemental guidance or order.

(b)

Scenarios provided by FHFA.

[85 FR 16530, Mar. 24, 2020]

§ 1238.4

Methodologies and practices.

(a)

Potential impact.

(1) Potential losses, pre-provision net revenues, and future pro forma capital positions over the planning horizon; and

(2) Capital levels and capital ratios, including regulatory capital and net worth, and any other capital ratios specified by FHFA.

(b)

Planning horizon.

(c)

Additional analytical techniques.

(d)

Controls and oversight of the stress testing processes.

(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 Enterprise warrants, but at least annually; and

(3) Senior management of the Enterprise and each member of the board of directors shall receive a summary of the stress test results.

[85 FR 16530, Mar. 24, 2020]

§ 1238.5

Required report to FHFA and FRB of stress test results and related information.

(a)

Report required for stress tests.

(b)

Content of the report for annual stress test.

(c)

Confidential treatment of information submitted.

[85 FR 16530, Mar. 24, 2020]

§ 1238.6

Post-assessment actions by the Enterprises.

Each Enterprise shall take the results of the stress test conducted under § 1238.3 into account in making changes, as appropriate, to the Enterprise'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 an Enterprise is under FHFA conservatorship, any post-assessment actions shall require prior FHFA approval.

[85 FR 16530, Mar. 24, 2020]

§ 1238.7

Publication of results by regulated entities.

(a)

Public disclosure of results required for stress tests of the Enterprises.

(b)

Information to be disclosed in the summary.

(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, and foreclosure rate, etc.);

(3) A general description of the methodologies employed to estimate losses, pre-provision net revenue, 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 an Enterprise's overall capital planning and capital assessment. If an Enterprise is under conservatorship, this description shall be coordinated with FHFA;

(5) Aggregate losses, pre-provision net revenue, net income, net worth, 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.,

[85 FR 16530, Mar. 24, 2020]

§ 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.

Pt. 1239

PART 1239RESPONSIBILITIES OF BOARDS OF DIRECTORS, CORPORATE PRACTICES, AND CORPORATE GOVERNANCE

Subpart AGeneral

Sec.

1239.1

Purpose.

Authority:

12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), 4526, and 15 U.S.C. 78 oo

Source:

80 FR 72336, Nov. 19, 2015, unless otherwise noted.

Subpart AGeneral

§ 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

Board of directors

Business risk

Community financial institution

Compensation

Credit risk

Employee

Executive officer

Immediate family member

Internal auditor

Liquidity risk

Market risk

NYSE

Operational risk

Risk appetite

Significant deficiency

Subpart BCorporate Practices and Procedures Applicable to All Regulated Entities

§ 1239.3

Law applicable to corporate governance and indemnification practices.

(a)

General.

(b)

Election and designation of body of law.

(i) The law of the jurisdiction in which the principal office of the regulated entity is located;

(ii) The Delaware General Corporation Law (Del. Code Ann. Title 8); or

(iii) The Revised Model Business Corporation Act.

(2) Each regulated entity shall designate in its bylaws the body of law elected for its corporate governance and indemnification practices and procedures pursuant to this paragraph, and shall do so by no later than March 18, 2016.

(c)

Indemnification.

(2) Each regulated entity shall have in place policies and procedures consistent with this section for indemnification of its directors, officers, and employees. Such policies and procedures shall address how the board of directors is to approve or deny requests for indemnification from current and former directors, officers, and employees, and shall include standards relating to indemnification, investigations by the board of directors, and review by independent counsel.

(3) Nothing in this paragraph (c) shall affect any rights to indemnification (including the advancement of expenses) that a director or any other officer or employee had with respect to any actions, omissions, transactions, or facts occurring prior to the effective date of this paragraph.

(4) FHFA has the authority under the Safety and Soundness Act to review a regulated entity's indemnification policies, procedures, and practices to ensure that they are conducted in a safe and sound manner, and that they are consistent with the body of law adopted by the board of directors under paragraph (b) of this section.

(d)

No rights created.

§ 1239.4

Duties and responsibilities of directors.

(a)

Management of a regulated entity.

(b)

Duties of directors.

(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 regulated entity, and with such care, including reasonable inquiry, as is required under the Revised Model Business Corporation Act or the other body of law that the entity's board of directors has chosen to follow for its corporate governance and indemnification practices

and procedures in accordance with § 1239.3(b);

(2) For Bank directors, administer the affairs of the regulated entity fairly and impartially and without discrimination 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 regulated entity's balance sheet and income statement and to ask substantive questions of management and the internal and external auditors;

(4) Direct the operations of the regulated entity in conformity with the requirements 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 administers 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 practices and procedures in accordance with § 1239.3(b).

(c)

Director responsibilities.

(1) The risk management and compensation programs of the regulated entity;

(2) The processes for providing accurate financial reporting and other disclosures, and communications with stockholders; and

(3) The responsiveness of executive officers in providing accurate and timely reports to FHFA and in addressing all supervisory concerns of FHFA in a timely and appropriate manner.

(d)

Authority regarding staff and outside consultants.

(2) The board of directors and its committees may require that staff of the regulated entity that provides services to the board or any committee under paragraph (d)(1) of this section report directly to the board or such committee, as appropriate.

Board committees.

(a)

General.

(b)

Required committees.

(c)

Charter.

(d)

Frequency of meetings.

Subpart COther Requirements Applicable to All Regulated Entities

§ 1239.10

Code of conduct and ethics.

(a)

General.

(b)

Review.

§ 1239.11

Risk management.

(a)

Risk management program

Adoption.

(2)

Risk appetite.

(3)

Risk management program requirements.

(i) Risk limitations appropriate to each business line of the regulated entity;

(ii) Appropriate policies and procedures relating to risk management governance, risk oversight infrastructure, 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.

(1)

Committee structure.

(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.

(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.

Appointment of a chief risk officer (CRO).

(2)

Organizational structure of the risk management function.

(3)

Responsibilities of the CRO.

(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 policies and procedures that he or she considers necessary or appropriate.

(6) The compensation of a regulated entity's CRO shall be appropriately structured to provide for an objective and independent assessment of the risks taken by the regulated entity.

§ 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

§ 1239.13

Regulatory reports.

(a)

Reports.

(b)

Definition.

Regulatory Report

(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.

§ 1239.14

Strategic business plan.

(a)

Adoption of strategic business plan.

(1)(i) In the case of a Bank, articulate measurable goals and objectives for each significant business activity and for all authorized 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;

(ii) In the case of an Enterprise, articulate measurable goals and objectives for each significant existing activity and for significant authorized new activities;

(2) Discuss how the regulated entity will address credit needs and market opportunities identified through ongoing market research and stakeholder consultations;

(3) Describe any significant activities in which the regulated entity is planning to be engaged, including any significant changes to business strategy or approach that the regulated entity is planning to undertake, and discuss how such activities would further the regulated entity's mission and public purposes;

(4)(i) In the case of a Bank, be supported by appropriate and timely research and analysis of relevant market developments and member and housing associate demand for Bank products and services;

(ii) In the case of an Enterprise, be supported by appropriate and timely research and analysis of relevant market developments; and

(5) Identify current and emerging risks associated with the regulated entity's significant existing activities or new activities, and discuss how the regulated entity plans to address such risks while furthering its public purposes and mission in a safe and sound manner.

(b)

Review and monitoring.

(1) Review the regulated entity's strategic business plan at least annually;

(2) Re-adopt the strategic business plan for the regulated entity at least every three years; and

(3) Establish management reporting requirements and monitor implementation of the strategic

business plan and the goals and objectives contained therein.

[83 FR 52954, Oct. 19, 2018]

Subpart DEnterprise Specific Requirements

§ 1239.20

Board of directors of the Enterprises.

(a)

Membership

Limits on service of board members.

General requirement.

(ii)

Waiver.

(2)

Independence of board members.

(3)

Segregation of duties.

(b)

Meetings, quorum and proxies, information, and annual review

Frequency of meetings.

(2)

Non-management board member meetings.

(3)

Quorum of board of directors; proxies not permissible.

(4)

Information.

(5)

Annual review.

§ 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 EBank Specific Requirements

§ 1239.30

Bank member products policy.

(a)

Adoption and review of member products policy

Adoption.

(2)

Review and compliance.

(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.

(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

[Reserved]

§ 1239.32

Audit committee.

(a)

Establishment.

(b)

Composition.

(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.

(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.

(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.

(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.

[80 FR 72336, Nov. 19, 2015, as amended at 81 FR 76295, Nov. 2, 2016]

§ 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.

SUBCHAPTER CENTERPRISES

Pt. 1240

PART 1240CAPITAL ADEQUACY OF ENTERPRISES

Sec.

Single-family mortgage exposures.

1240.34

Multifamily mortgage exposures.

1240.35

Off-balance sheet exposures.

1240.36

Derivative contracts.

1240.37

Cleared transactions.

1240.38

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1240.39

Collateralized transactions.

Risk-Weighted Assets for Unsettled Transactions

1240.40

Unsettled transactions.

Risk-Weighted Assets for CRT and Other Securitization Exposures

1240.41

Operational requirements for CRT and other securitization exposures.

1240.42

Risk-Weighted assets for CRT and other securitization exposures.

1240.43

Simplified supervisory formula approach (SSFA).

1240.44

Credit risk transfer approach (CRTA).

1240.45

Securitization exposures to which the SSFA and the CRTA do not apply.

1240.46

Recognition of credit risk mitigants for securitization exposures.

Risk-Weighted Assets for Equity Exposures

1240.51

Introduction and exposure measurement.

1240.52

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[Reserved]

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1240.62

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1240.63

Disclosures.

Subpart ERisk-Weighted AssetsInternal Ratings-Based and Advanced Measurement Approaches

1240.100

Purpose, applicability, and principle of conservatism.

1240.101

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1240.121

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1240.123

Advanced approaches credit risk-weighted asset calculations.

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[Reserved]

1240.161

Qualification requirements for incorporation of operational risk mitigants.

1240.162

Mechanics of operational risk risk-weighted asset calculation.

Subpart FRisk-Weighted AssetsMarket Risk

1240.201

Purpose, applicability, and reservation of authority.

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1240.204

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1240.205

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Subpart GStability Capital Buffer

1240.400

Stability capital buffer.

Subpart HCapital Planning and Stress Capital Buffer Determination

1240.500

Capital planning and stress capital buffer determination.

1240.501-1240.502

[Reserved]

Authority:

12 U.S.C. 4511, 4513, 4513b, 4514, 4515, 4517, 4526, 4611-4612, 4631-36.

Source:

85 FR 82198, Dec. 17, 2020, unless otherwise noted.

Subpart AGeneral Provisions

§ 1240.1

Purpose, applicability, reservations of authority, reporting, and timing.

(a)

Purpose.

(b)

Authorities

Limitations of authority.

(2)

Permissible activities.

(c)

Applicability

Covered regulated entities.

(2)

Capital requirements and overall capital adequacy standards.

(3)

Regulatory capital.

(4)

Risk-weighted assets.

(ii) Subject to § 1240.4, each Enterprise must use the methodologies in subparts E and F of this part to calculate advanced approaches total risk-weighted assets.

(d)

Reservation of authority regarding capital.

(1)

Additional capital in the aggregate.

(2)

Regulatory capital elements.

(ii) Notwithstanding the criteria for regulatory capital instruments set forth in subpart C of this part, FHFA may find that a capital element may be included in an Enterprise's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital on a permanent or temporary basis consistent with the loss absorption capacity of the element and in accordance with § 1240.20(e).

(3)

Risk-weighted asset amounts.

(4)

Total leverage.

(5)

Consolidation of certain exposures.

(6)

Other reservation of authority.

(e)

Corrective action and enforcement.

(2) FHFA also may enforce the total capital requirement established under § 1240.10(a) and the core capital requirement established under § 1240.10(e) pursuant to section 1364 of the Safety and Soundness Act (12 U.S.C. 4614).

(3) This part is also a prudential standard adopted under section 1313B of the Safety and Soundness Act (12 U.S.C. 4513b), excluding § 1240.11, which is a prudential standard only for purposes of § 1240.4. Section 1313B of the Safety and Soundness Act (12 U.S.C. 4513b) authorizes the Director to require that an Enterprise submit a corrective plan under § 1236.4

specifying the actions the Enterprise will take to correct the deficiency if the Director determines that an Enterprise is not in compliance with this part.

(f)

Reporting procedure and timing

Capital Reports

In general.

(ii)

Required content.

(A) The common equity tier 1 capital, core capital, tier 1 capital, total capital, and adjusted total capital of the Enterprise;

(B) The stress capital buffer, the capital conservation buffer amount (if prescribed by FHFA), the stability capital buffer, and the maximum payout ratio of the Enterprise;

(C) The adjusted total assets of the Enterprise; and

(D) The standardized total risk-weighted assets of the Enterprise.

(2)

Timing.

(3)

Approval.

(4)

Adjustment.

(5)

Public disclosure.

§ 1240.2

Definitions.

As used in this part:

Acquired CRT exposure

(1) Any exposure that arises from a credit risk transfer of the Enterprise and has been acquired by the Enterprise since the issuance or entry into the credit risk transfer by the Enterprise; or

(2) Any exposure that arises from a credit risk transfer of the other Enterprise.

Additional tier 1

Adjusted allowances for credit losses (AACL)

Adjusted total assets

(1) The balance sheet carrying value of all of the Enterprise's on-balance sheet assets, plus the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under GAAP, less amounts deducted from tier 1 capital under § 1240.22(a), (c), and (d), and less the value of securities received in security-for-security repo-style transactions, where the Enterprise acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received;

(2) The potential future credit exposure (PFE) for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (9) of this definition and, at the discretion of the Enterprise, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP), to which the Enterprise is a counterparty as determined under § 1240.36, but without regard to § 1240.36(c), provided that:

(i) An Enterprise may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under § 1240.36, but without regard to § 1240.36(c), provided that it does not adjust the net-to-gross ratio (NGR); and

(ii) An Enterprise that chooses to exclude the PFE of credit derivatives or other similar instruments through which it provides credit protection pursuant to paragraph (2)(i) of this definition must do so consistently over time for the calculation of the PFE for all such instruments;

(3)(i) The amount of cash collateral that is received from a counterparty to a derivative contract and that has offset the mark-to-fair value of the derivative asset, or cash collateral that is posted to a

counterparty to a derivative contract and that has reduced the Enterprise's on-balance sheet assets, unless such cash collateral is all or part of variation margin that satisfies the conditions in paragraphs (3)(iv) through (vii) of this definition;

(ii) The variation margin is used to reduce the current credit exposure of the derivative contract, calculated as described in § 1240.36(b), and not the PFE;

(iii) For the purpose of the calculation of the NGR described in § 1240.36(b)(2)(ii)(B), variation margin described in paragraph (3)(ii) of this definition may not reduce the net current credit exposure or the gross current credit exposure;

(iv) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation, or an agreement with the counterparty);

(v) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(vi) The variation margin transferred under the derivative contract or the

(vii) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph (3)(vii), currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(viii) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

(4) The effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the derivative contract) of a credit derivative, or other similar

instrument, through which the Enterprise provides credit protection, provided that:

(i) The Enterprise may reduce the effective notional principal amount of the credit derivative by the amount of any reduction in the mark-to-fair value of the credit derivative if the reduction is recognized in common equity tier 1 capital;

(ii) The Enterprise may reduce the effective notional principal amount of the credit derivative by the effective notional principal amount of a purchased credit derivative or other similar instrument, provided that the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the credit derivative through which the Enterprise provides credit protection and that:

(A) With respect to a credit derivative that references a single exposure, the reference exposure of the purchased credit derivative is to the same legal entity and ranks

pari passu

(B) With respect to a credit derivative that references multiple exposures, the reference exposures of the purchased credit derivative are to the same legal entities and rank

pari passu

pari passu

(C) Where an Enterprise has reduced the effective notional amount of a credit derivative through which the Enterprise provides credit protection in accordance with paragraph (4)(i) of this definition, the Enterprise must also reduce the effective notional principal amount of a purchased credit derivative used to offset the credit derivative through which the Enterprise provides credit protection, by the amount of any increase in the mark-to-fair value of the purchased credit derivative that is recognized in common equity tier 1 capital; and

(D) Where the Enterprise purchases credit protection through a total return swap and records the net payments received on a credit derivative through which the Enterprise provides credit protection in net income, but does not record offsetting deterioration in the mark-to-fair value of the credit derivative through which the Enterprise provides credit protection in net income (either through

reductions in fair value or by additions to reserves), the Enterprise may not use the purchased credit protection to offset the effective notional principal amount of

(5) Where an Enterprise acting as a principal has more than one repo-style transaction with the same counterparty and has offset the gross value of receivables due from a counterparty under reverse repurchase transactions by the gross value of payables under repurchase transactions due to the same counterparty, the gross value of receivables associated with the repo-style transactions less any on-balance sheet receivables amount associated with these repo-style transactions included under paragraph (1) of this definition, unless the following criteria are met:

(i) The offsetting transactions have the same explicit final settlement date under their governing agreements;

(ii) The right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding; and

(iii) Under the governing agreements, the counterparties intend to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement, (that is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date), where both transactions are settled through the same settlement system, the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that settlement of both transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement;

(6) The counterparty credit risk of a repo-style transaction, including where the Enterprise acts as an agent for a repo-style transaction and indemnifies the customer with respect to the performance of the customer's counterparty in an amount limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, calculated as follows:

(i) If the transaction is not subject to a qualifying master netting agreement, the counterparty credit

risk (E*) for transactions with a counterparty must be calculated on a transaction by transaction basis, such that each transaction i is treated as its own netting set, in accordance with the following formula, where Ei is the fair value of the instruments, gold, or cash that the Enterprise has lent, sold subject to repurchase, or provided as collateral to the counterparty, and Ci is the fair value of the instruments, gold, or cash that the Enterprise has borrowed, purchased subject to resale, or received as collateral from the counterparty:

E

i

i

i

(ii) If the transaction is subject to a qualifying master netting agreement, the counterparty credit risk (E*) must be calculated as the greater of zero and the total fair value of the instruments, gold, or cash that the Enterprise has lent, sold subject to repurchase or provided as collateral to a counterparty for all transactions included in the qualifying master netting agreement (E

i

i

E* = max {0, [E

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(7) If an Enterprise acting as an agent for a repo-style transaction provides a guarantee to a customer of the security or cash its customer has lent or borrowed with respect to the performance of the customer's counterparty and the guarantee is not limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, the amount of the guarantee that is greater than the difference between the fair value of the security or cash its customer has lent and the value of the collateral the borrower has provided;

(8) The credit equivalent amount of all off-balance sheet exposures of the

(9) For an Enterprise that is a clearing member:

(i) A clearing member Enterprise that guarantees the performance of a clearing member client with respect to a cleared transaction must treat its exposure to the clearing member client as a derivative contract for purposes of determining its adjusted total assets;

(ii) A clearing member Enterprise that guarantees the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client must treat its exposure to the CCP as a derivative contract for purposes of determining its adjusted total assets;

(iii) A clearing member Enterprise that does not guarantee the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client may exclude its exposure to the CCP for purposes of determining its adjusted total assets;

(iv) An Enterprise that is a clearing member may exclude from its adjusted total assets the effective notional principal amount of credit protection sold through a credit derivative contract, or other similar instrument, that it clears on behalf of a clearing member client through a CCP as calculated in accordance with paragraph (4) of this definition; and

(v) Notwithstanding paragraphs (9)(i) through (iii) of this definition, an Enterprise may exclude from its adjusted total assets a clearing member's exposure to a clearing member client for a derivative contract, if the clearing member client and the clearing member are affiliates and consolidated for financial reporting purposes on the Enterprise's balance sheet.

Adjusted total capital

Advanced approaches total risk-weighted assets

(1) The sum of:

(i) Credit-risk-weighted assets for general credit risk (including for mortgage exposures), cleared transactions, default fund contributions, unsettled transactions, securitization exposures (including retained CRT exposures), equity exposures, and the fair value adjustment to reflect counterparty credit risk in valuation of OTC derivative contracts, each as calculated under § 1240.123.

(ii) Risk-weighted assets for operational risk, as calculated under § 1240.162(c); and

(iii) Advanced market risk-weighted assets; minus

(2) Excess eligible credit reserves not included in the Enterprise's tier 2 capital.

Advanced market risk-weighted assets

Affiliate

Allowances for loan and lease losses (ALLL)

ALLL

Bankruptcy remote

Carrying value

Central counterparty (CCP)

CFTC

Clean-up call

Cleared transaction

(1) The following transactions are cleared transactions:

(i) A transaction between a CCP and an Enterprise that is a clearing member of the CCP where the Enterprise enters into the transaction with the CCP for the Enterprise's own account;

(ii) A transaction between a CCP and an Enterprise that is a clearing member of the CCP where the Enterprise is acting as a financial intermediary on behalf of a clearing member client and the transaction offsets another transaction that satisfies the requirements set forth in § 1240.3(a);

(iii) A transaction between a clearing member client Enterprise and a clearing member where the clearing member acts as a financial intermediary on behalf of the clearing member client and enters into an offsetting transaction with a CCP, provided that the requirements set forth in § 1240.3(a) are met; or

(iv) A transaction between a clearing member client Enterprise and a CCP where a clearing member guarantees the performance of the clearing member client Enterprise to the CCP and the transaction meets the requirements of § 1240.3(a)(2) and (3).

(2) The exposure of an Enterprise that is a clearing member to its clearing member client is not a cleared transaction where the Enterprise is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the Enterprise provides a guarantee to the CCP on the performance of the client.

Clearing member

Clearing member client

Client-facing derivative transaction

Collateral agreement

(1) Under applicable law in the relevant jurisdictions, other than

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (1)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (1)(i) of this definition; or

(2) Other than to the extent necessary for the counterparty to comply with applicable law.

Commitment

Common equity tier 1 capital

Company

Core capital

Corporate exposure

(1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);

(2) An exposure to a GSE;

(3) A mortgage exposure;

(4) A cleared transaction;

(5) A default fund contribution;

(6) A securitization exposure;

(7) An equity exposure;

(8) An unsettled transaction; or

(9) A separate account.

Credit derivative

Credit-enhancing interest-only strip (CEIO)

(1) Represents a contractual right to receive some or all of the interest and no more than a minimal amount of principal due on the underlying exposures of a securitization; and

(2) Exposes the holder of the CEIO to credit risk directly or indirectly associated with the underlying exposures that exceeds a pro rata share of the holder's claim on the underlying exposures, whether through subordination provisions or other credit-enhancement techniques.

Credit risk mitigant

Credit risk transfer (CRT)

Credit union

et seq.

CRT special purpose entity (CRT SPE)

Current Expected Credit Losses (CECL)

Current exposure

Current exposure methodology

Custodian

Default fund contribution

Depository institution

Derivative contract

Discretionary bonus payment

(1) The Enterprise retains discretion as to whether to make, and the amount of, the payment until the payment is awarded to the executive officer;

(2) The amount paid is determined by the Enterprise without prior promise to, or agreement with, the executive officer; and

(3) The executive officer has no contractual right, whether express or implied, to the bonus payment.

Distribution

(1) A reduction of tier 1 capital through the repurchase of a tier 1 capital instrument or by other means, except when an Enterprise, within the same quarter when the repurchase is announced, fully replaces a tier 1 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for:

(i) A common equity tier 1 capital instrument if the instrument being repurchased was part of the Enterprise's common equity tier 1 capital, or

(ii) A common equity tier 1 or additional tier 1 capital instrument if the instrument being repurchased was part of the Enterprise's tier 1 capital;

(2) A reduction of tier 2 capital through the repurchase, or redemption prior to maturity, of a tier 2 capital instrument or by other means, except when an Enterprise, within the same quarter when the repurchase or redemption is announced, fully replaces a tier 2 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for a tier 1 or tier 2 capital instrument;

(3) A dividend declaration or payment on any tier 1 capital instrument;

(4) A dividend declaration or interest payment on any tier 2 capital instrument if the Enterprise has full discretion to permanently or temporarily suspend such payments without triggering an event of default; or

(5) Any similar transaction that FHFA determines to be in substance a distribution of capital.

Dodd-Frank Act

Early amortization provision

(1) Is triggered solely by events not directly related to the performance of the underlying exposures or the originating Enterprise (such as material changes in tax laws or regulations); or

(2) Leaves investors fully exposed to future draws by borrowers on the underlying exposures even after the provision is triggered.

Effective notional amount

Eligible clean-up call

(1) Is exercisable solely at the discretion of the originating Enterprise or servicer;

(2) Is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and

(3)(i) For a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or

(ii) For a synthetic securitization or credit risk transfer, is only exercisable when 10 percent or less of the principal

Eligible credit derivative

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap or nth-to-default swap, the contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as

they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld;

(7) If the credit derivative is a credit default swap or nth-to-default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event; and

(8) If the credit derivative is a total return swap and the Enterprise records net payments received on the swap as net income, the Enterprise records offsetting deterioration in the value of the hedged exposure (either through reductions in fair value or by an addition to reserves).

Eligible credit reserves

Eligible funded synthetic risk transfer

(1) A CRT SPE that is bankruptcy remote from the Enterprise and not consolidated with the Enterprise under GAAP is contractually obligated to reimburse the Enterprise for specified losses on a reference pool of mortgage exposures of the Enterprise upon designated credit events and designated modification events;

(2) The credit risk transferred to the CRT SPE is transferred to one or more third parties through two or more classes of securities of different seniority issued by the CRT SPE;

(3) The performance of each class of securities issued by the CRT SPE depends on the performance of the reference pool; and

(4) The proceeds of the securities issued by the CRT SPE

(i) Are, at the time of entry into the transaction, in the aggregate no less than the maximum obligation of the CRT SPE to the Enterprise; and

(ii) Are invested in financial collateral that secures the payment obligations of the CRT SPE to the Enterprise.

Eligible guarantee

(1) Is written;

(2) Is either:

(i) Unconditional, or

(ii) A contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements);

(3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure;

(4) Gives the beneficiary a direct claim against the protection provider;

(5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(6) Except for a guarantee by a sovereign, is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(8) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure;

(9) Is not provided by an affiliate of the Enterprise; and

(10) Is provided by an eligible guarantor.

Eligible guarantor

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841

et seq.

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

Eligible margin loan

(1) An extension of credit where:

(i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(ii) The collateral is marked-to-fair value daily, and the transaction is subject to daily margin maintenance requirements; and

(iii) The extension of credit is conducted under an agreement that provides the Enterprise the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case:

(A) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

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(B) The agreement may limit 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 of the counterparty to the extent necessary for the counterparty to comply with applicable law.

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, an Enterprise must comply with the requirements of § 1240.3(b) with respect to that exposure.

Eligible multifamily lender risk share

Eligible reinsurance risk transfer

Eligible senior-subordinated structure

Eligible single-family lender risk share

Equity exposure

(1) A security or instrument (whether voting or non-voting and whether certificated or not certificated) that represents a direct or an indirect ownership interest in, and is a residual claim on, the assets and income of a company, unless:

(i) The issuing company is consolidated with the Enterprise under GAAP;

(ii) The Enterprise is required to deduct the ownership interest from tier 1 or tier 2 capital under this

part;

(iii) The ownership interest incorporates a payment or other similar obligation on the part of the issuing company (such as an obligation to make periodic payments); or

(iv) The ownership interest is a securitization exposure;

(2) A security or instrument that is mandatorily convertible into a security or instrument described in paragraph (1) of this definition;

(3) An option or warrant that is exercisable for a security or instrument described in paragraph (1) of this definition; or

(4) Any other security or instrument (other than a securitization exposure) to the extent the return on the security or instrument is based on the performance of a security or instrument described in paragraph (1) of this definition.

ERISA

et seq.

Executive officer

Exposure amount

(1) For the on-balance sheet component of an exposure (including a mortgage exposure); an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the Enterprise determines the exposure amount under § 1240.39; a cleared transaction; a default fund contribution; or a securitization exposure), the Enterprise's carrying value of the exposure.

(2) For the off-balance sheet component of an exposure (other than an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the Enterprise calculates the exposure amount under § 1240.39; a cleared transaction; a default fund contribution; or a securitization exposure), the notional amount of the off-balance sheet component multiplied by the appropriate credit conversion factor (CCF) in § 1240.35.

(3) For an exposure that is an OTC derivative contract, the exposure amount determined under § 1240.36.

(4) For an exposure that is a cleared transaction, the exposure amount determined under § 1240.37.

(5) For an exposure that is an eligible margin loan or repo-style transaction for which the Enterprise calculates the exposure amount as provided in § 1240.39, the exposure amount determined under § 1240.39.

(6) For an exposure that is a securitization exposure, the exposure amount determined under § 1240.42.

Federal Deposit Insurance Act

Federal Reserve Board

Financial collateral

(1) In the form of:

(i) Cash on deposit with the Enterprise (including cash held for the Enterprise by a third-party custodian or trustee);

(ii) Gold bullion;

(iii) Long-term debt securities that are not resecuritization exposures and that are investment grade;

(iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade;

(v) Equity securities that are publicly traded;

(vi) Convertible bonds that are publicly traded; or

(vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and

(2) In which the Enterprise has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

Gain-on-sale

(1) The Enterprise's receipt of cash in connection with the securitization; or

(2) The reporting of a mortgage servicing asset.

General obligation

Government-sponsored enterprise (GSE)

Guarantee

Investment grade

Minimum transfer amount

Mortgage-backed security (MBS)

Mortgage exposure

Multifamily mortgage exposure

Mortgage servicing assets (MSAs)

Multilateral development bank (MDB)

Netting set

(1) That is not subject to such a master netting agreement; or

(2) Where the Enterprise has identified specific wrong-way risk.

Non-guaranteed separate account

(1) Does not contractually guarantee either a minimum return or account value to the contract holder; and

(2) Is not required to hold reserves (in the general account) pursuant to its contractual obligations to a policyholder.

Nth-to-default credit derivative

Original maturity

(1) For a commitment that is not subject to extension or renewal, the stated expiration date of the commitment; or

(2) For a commitment that is subject to extension or renewal, the earliest date on which the Enterprise can, at its option, unconditionally cancel the commitment.

Originating Enterprise,

Over-the-counter (OTC) derivative contract

(1) Between an Enterprise that is a clearing member and a counterparty where the Enterprise is acting as a financial intermediary and enters into a cleared transaction with a CCP that offsets the transaction with the counterparty; or

(2) In which an Enterprise that is a clearing member provides a CCP a guarantee on the performance of the counterparty to the transaction.

Participation agreement

Protection amount (P)

Publicly-traded

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act; or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question.

Public sector entity (PSE)

Qualifying central counterparty (QCCP)

(1)(i) Is a designated financial market utility (FMU) under Title VIII of the Dodd-Frank Act;

(ii) If not located in the United States, is regulated and supervised in a manner equivalent to a designated FMU; or

(iii) Meets the following standards:

(A) The central counterparty requires all parties to contracts cleared by the counterparty to be fully collateralized on a daily basis;

(B) The Enterprise demonstrates to the satisfaction of FHFA that the central counterparty:

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(2)(i) Provides the Enterprise with the central counterparty's hypothetical capital requirement or the information necessary to calculate such hypothetical capital requirement, and other information the Enterprise is required to obtain under § 1240.37(d)(3);

(ii) Makes available to FHFA and the CCP's regulator the information described in paragraph (2)(i) of this definition; and

(iii) Has not otherwise been determined by FHFA to not be a QCCP due to its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns that are inconsistent with the risk weight assigned to qualifying central counterparties under § 1240.37.

(3) A QCCP that fails to meet the requirements of a QCCP in the future may still be treated as a QCCP under the conditions specified in § 1240.3(f).

Qualifying master netting agreement

(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 Enterprise 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:

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of

the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit 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 of the counterparty to the extent necessary for the counterparty to comply with applicable law.

Repo-style transaction

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-fair value daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a securities contract or repurchase agreement under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions; or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the Enterprise the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

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(B) The transaction is:

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Resecuritization

Resecuritization exposure

(1) An on- or off-balance sheet exposure to a resecuritization; or

(2) An exposure that directly or indirectly references a resecuritization exposure.

Retained CRT exposure

Revenue obligation

Securities and Exchange Commission (SEC)

Securities Exchange Act

Securitization exposure

(1) An on-balance sheet or off-balance sheet credit exposure that arises from a traditional securitization or synthetic securitization (including a resecuritization);

(2) An exposure that directly or indirectly references a securitization exposure described in paragraph (1) of this definition;

(3) A retained CRT exposure; or

(4) An acquired CRT exposure.

Securitization special purpose entity (securitization SPE)

Separate account

(1) The account must be legally recognized as a separate account under applicable law;

(2) The assets in the account must be insulated from general liabilities of the insurance company under applicable law in the event of the insurance company's insolvency;

(3) The insurance company must invest the funds within the account as directed by the contract holder in designated investment alternatives or in accordance with specific investment objectives or policies; and

(4) All investment gains and losses, net of contract fees and assessments, must be passed through to the contract holder, provided that the contract may specify conditions under which there may be a minimum guarantee but must not include contract terms that limit the maximum investment return available to the policyholder.

Servicer cash advance facility

Single-family mortgage exposure

Sovereign

Sovereign default

Sovereign exposure

(1) A direct exposure to a sovereign; or

(2) An exposure directly and unconditionally backed by the full faith and credit of a sovereign.

Specific wrong-way risk

(1) The counterparty and issuer of the collateral supporting the transaction; or

(2) The counterparty and the reference asset of the transaction, are affiliates or are the same entity.

Standardized market risk-weighted assets

Standardized total risk-weighted assets

(1) The sum of

(i) Total risk-weighted assets for general credit risk as calculated under § 1240.31;

(ii) Total risk-weighted assets for cleared transactions and default fund contributions as calculated under § 1240.37;

(iii) Total risk-weighted assets for unsettled transactions as calculated under § 1240.40;

(iv) Total risk-weighted assets for retained CRT exposures, acquired CRT exposures, and other securitization exposures as calculated under § 1240.42;

(v) Total risk-weighted assets for equity exposures as calculated under § 1240.52;

(vi) Risk-weighted assets for operational risk, as calculated under § 1240.162(c) or § 1240.162(d), as applicable; and

(vii) Standardized market risk-weighted assets; minus

(2) Excess eligible credit reserves not included in the Enterprise's tier 2 capital.

Subsidiary

Synthetic securitization

(1) All or a portion of the credit risk of one or more underlying exposures is retained or transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual mortgage exposure or other retail exposure);

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and

(4) All or substantially all of the underlying exposures are financial exposures (such as mortgage exposures, loans, commitments, credit derivatives, guarantees, receivables, asset-backed

securities, mortgage-backed securities, other debt securities, or equity securities).

Tier 1 capital

Tier 2 capital

Total capital

Traditional securitization

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as mortgage exposures, loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) The underlying exposures are not owned by an operating company;

(6) The underlying exposures are not owned by a small business investment company defined in section 302 of the Small Business Investment Act;

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act;

(8) FHFA may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a traditional securitization based on the transaction's leverage, risk profile, or economic substance;

(9) FHFA may deem a transaction that meets the definition of a traditional securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a traditional securitization based on the transaction's leverage, risk profile, or economic substance; and

(10) The transaction is not:

(i) An investment fund;

(ii) A collective investment fund held by a State member bank as fiduciary and, consistent with local law, invested collectively

(A) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or

(B) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).

(iii) An employee benefit plan (as defined in 29 U.S.C. 1002(3)), a governmental plan (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code;

(iv) A synthetic exposure to the capital of a financial institution to the extent deducted from capital under § 1240.22; or

(v) Registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a-1

et seq.

Tranche

Transition order

Unconditionally cancelable

Underlying exposures

Variation margin agreement

Variation margin threshold

Wrong-way risk

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022]

§ 1240.2, Nt.

Effective Date Note:

At 88 FR 83474, Nov. 30, 2023, § 1240.2 was amended by revising paragraphs (1) through (3) in the definition of Adjusted total assets,adding in alphabetical order definitions for Backtesting, Basis derivative contract, Commercial end-user, Commingled security, Credit default swap, and Credit valuation adjustment,removing the definitions of Current exposure and Current exposure methodology, adding in alphabetical order a definition for Eligible time-based call, in the definition of Exposure amount, in paragraph (1), removing the words ; an OTC derivative contract and adding in their place the words (other than an OTC derivative contract and in paragraph (3), adding the words or exposure at default (EAD) after the word amount, revising paragraph (2) in the definition of Financial collateral, adding in alphabetical order definitions for Guarantee sset and Independent collateral, revising the definition of Mortgage servicing assets (MSAs), adding in alphabetical order a definition for Net independent collateral amount, revising the definition of Netting set, adding in alphabetical order definitions for Qualifying cross-product master netting agreement and Speculative grade, in the definition of Standardized total risk-weighted assets, redesignating paragraphs (1)(vi) and (1)(vii) as paragraphs (1)(vii) and (1)(viii), adding new paragraph (1)(vi), and revising newly designated paragraph (i)(viii) and adding in alphabetical order definitions for Sub-speculative grade, Time-based call, Uniform Mortgage-backed Security, Value-at-Risk, Variation margin, Variation margin amount, and Volatility derivative contract., effective Apr. 1, 2024. For the convenience of the user, the added and revised text is set forth as follows:

§ 1240.2

Definitions.

Adjusted total assets

(1) The balance sheet carrying value of all of the Enterprise's on-balance sheet assets, plus the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under Generally Accepted Accounting Principles (GAAP), less amounts deducted from tier 1 capital under § 1240.22(a), (c), and (d), and less the value of securities received

less

(2)(i) The potential future exposure (PFE) for each netting set to which the Enterprise is a counterparty (including cleared transactions except as provided in paragraph (9) of this definition and, at the discretion of the Enterprise, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP), as determined under § 1240.36(c)(7), in which the term C in § 1240.36(c)(7)(i) equals zero, and, for any counterparty that is not a commercial end-user, multiplied by 1.4. For purposes of this paragraph, an Enterprise may set the value of the term C in § 1240.36(c)(7)(i) equal to the amount of collateral posted by a clearing member client of the Enterprise in connection with the client-facing derivative transactions within the netting set; and

(ii) An Enterprise may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under § 1240.36(c), provided that it does so consistently over time for the calculation of the PFE for all such instruments;

(3)(i)(A) The replacement cost of each derivative contract or single product netting set of derivative contracts to which the Enterprise is a counterparty, calculated according to the following formula, and, for any counterparty that is not a commercial end-user, multiplied by 1.4:

Replacement Cost

V

CVM

r

CVM

p

;

Where:

(

1

V

(

2

CVM

r

(

3

CVM

p

(B) Notwithstanding paragraph (3)(i)(A) of this definition, where multiple netting sets are subject to a single variation margin agreement, an Enterprise must apply the formula for replacement cost provided in § 1240.36(c)(10)(i), in which the term C

MA

(C) For purposes of paragraph (3)(i)(A) of this definition, an Enterprise must treat a derivative contract that references an index as if it were multiple derivative contracts each referencing one component of the index if the Enterprise elected to treat the derivative contract as multiple derivative contracts under § 1240.36(c)(5)(vi);

(ii) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation, or an agreement with the counterparty);

(iii) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(iv) The variation margin transferred under the derivative contract or the governing rules of the CCP or QCCP for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract

or the governing rules for a cleared transaction;

(v) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(vi) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing

Backtesting

Basis derivative contract

i.e.,

Commercial end-user

(1)(i) Is using derivative contracts to hedge or mitigate commercial risk; and

(ii)(A) Is not an entity described in section 2(h)(7)(C)(i)(I) through (VIII) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(i)(I) through (VIII)); or

(B) Is not a financial entity for purposes of section 2(h)(7) of the Commodity Exchange Act (7 U.S.C. 2(h)) by virtue of section 2(h)(7)(C)(iii) of the Act (7 U.S.C. 2(h)(7)(C)(iii)); or

(2)(i) Is using derivative contracts to hedge or mitigate commercial risk; and

(ii) Is not an entity described in section 3C(g)(3)(A)(i) through (viii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(3)(A)(i) through (viii)); or

(3) Qualifies for the exemption in section 2(h)(7)(A) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(A)) by virtue of section 2(h)(7)(D) of the Act (7 U.S.C. 2(h)(7)(D)); or

(4) Qualifies for an exemption in section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(1)) by virtue of section 3C(g)(4) of the Act (15 U.S.C. 78c-3(g)(4)).

Commingled security

Credit default swap (CDS)

Credit valuation adjustment (CVA)

Eligible time-based call

(1) Is exercisable solely at the discretion of the originating Enterprise, provided the Enterprise obtains FHFA's non-objection prior to exercising the time-based call;

(2) Is not structured to avoid allocating credit losses to investors or otherwise structured to provide at most

de minimis

(3) Is exercisable no less than five years after the securitization or credit risk transfer issuance date or effective date, where the underlying collateral is mortgage exposures with amortization terms greater than 20 years.

(4) Is exercisable no less than four years after the securitization or credit risk transfer issuance date or effective date, where the underlying collateral is mortgage exposures with amortization terms of 20 years or less.

Financial collateral

(2) In which the Enterprise has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof, (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

Guarantee asset

Independent collateral

Mortgage servicing assets (MSAs)

Net independent collateral amount

Netting set

Qualifying cross-product master netting agreement

Speculative grade

Standardized total risk-weighted assets

(1) * * *

(vi) Credit valuation adjustment (CVA) risk-weighted assets as calculated under § 1240.36(d);

(viii) Standardized market risk-weighted assets, as calculated under § 1240.204; minus

Sub-speculative grade

Time-based call

Uniform Mortgage-backed Security (UMBS)

Value-at-Risk (VaR)

Variation margin

Variation margin amount

Volatility derivative contract

§ 1240.3

Operational requirements for counterparty credit risk.

For purposes of calculating risk-weighted assets under subpart D of this part:

(a)

Cleared transaction.

(1) The offsetting transaction must be identified by the CCP as a transaction for the clearing member client.

(2) The collateral supporting the transaction must be held in a manner that prevents the Enterprise from facing any loss due to an event of default, including from a liquidation, receivership, insolvency, or similar proceeding of either the clearing member or the clearing member's other clients.

(3) The Enterprise must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from a default or receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the arrangements of paragraph (a)(2) of

this section to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(4) The offsetting transaction with a clearing member must be transferable under the transaction documents and applicable laws in the relevant jurisdiction(s) to another clearing member should the clearing member default, become insolvent, or enter receivership, insolvency, liquidation, or similar proceedings.

(b)

Eligible margin loan.

(1) Meets the requirements of paragraph (1)(iii) of the definition of eligible margin loan in § 1240.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(c) [Reserved]

(d)

Qualifying master netting agreement.

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of the definition of qualifying master netting agreement in § 1240.2; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, 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

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in § 1240.2.

(e)

Repo-style transaction.

(1) Meets the requirements of paragraph (3) of the definition of repo-style transaction in § 1240.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(f)

Failure of a QCCP to satisfy the rule's requirements.

§ 1240.4

Transition.

(a)

Compliance dates.

(b)

Reporting requirements.

(2) For any reporting requirement under §§ 1240.61 through 1240.63, the compliance date will be no later than 10 business days after an Enterprise files its Annual Report on SEC Form 10-K for the fiscal year ending December 31, 2022.

(3) For any reporting requirement under § 1240.205, the compliance date will be no later than 10 business days after an Enterprise files its Annual Report on SEC Form 10-K for the fiscal year ending December 31, 2022.

(c)

Advanced approaches requirements.

(d)

Capital requirements and buffers

Requirements.

(i) The date of the termination of the conservatorship of the Enterprise (or, if later, the effective date of this part); and

(ii) Any later compliance date for § 1240.10 provided in a transition order applicable to the Enterprise.

(2)

Buffers.

(3)

Capital restoration plan.

(i) The prescribed capital conservation buffer amount of the Enterprise will be the amount equal to the sum of

(A) The common equity tier 1 capital that would otherwise be required under § 1240.10(d); and

(B) The prescribed capital conservation buffer amount that would otherwise apply under § 1240.11(a)(5); and

(ii) The prescribed leverage buffer amount of the Enterprise will be equal to 4.0 percent of the adjusted total assets of the Enterprise.

(4)

Prudential standard.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 33429, June 2, 2022]

Effective Date Note:

At 88 FR 83476, Nov. 30, 2023, § 1240.4 was amended by in paragraph (c) by removing the year 2025 and adding in its place the year 2028, effective Apr. 1, 2024.

Subpart BCapital Requirements and Buffers

§ 1240.10

Capital requirements.

(a)

Total capital.

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(b)

Adjusted total capital.

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(c)

Tier 1 capital.

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(d)

Common equity tier 1 capital.

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(e)

Core capital.

(f)

Leverage ratio.

(g)

Capital adequacy.

(2) An Enterprise must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

§ 1240.11

Capital conservation buffer and leverage buffer.

(a)

Definitions.

(1)

Capital conservation buffer.

(2)

Eligible retained income.

(i) The Enterprise's net income, as defined under GAAP, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(ii) The average of the Enterprise's net income for the four calendar quarters preceding the current calendar quarter.

(3)

Leverage buffer.

(4)

Maximum payout ratio.

(5)

Prescribed capital conservation buffer amount.

(6)

Prescribed leverage buffer amount.

(7)

Stress capital buffer.

(ii) If an Enterprise has not yet received a stress capital buffer requirement, its stress capital buffer for purposes of this part is 0.75 percent of the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter.

(b)

Maximum payout amount

Limits on distributions and discretionary bonus payments.

(2)

Maximum payout ratio.

(3)

No maximum payout amount limitation.

(i) A capital conservation buffer that is greater than its prescribed capital conservation buffer

amount; and

(ii) A leverage buffer that is greater than its prescribed leverage buffer amount.

(4)

Negative eligible retained income.

(i) The eligible retained income of the Enterprise is negative; and

(ii) Either:

(A) The capital conservation buffer of the Enterprise was less than its stress capital buffer; or

(B) The leverage buffer of the Enterprise was less than its prescribed leverage buffer amount.

(5)

Prior approval.

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(c)

Capital conservation buffer

Composition of the capital conservation buffer.

(2)

Calculation of capital conservation buffer.

(A) The Enterprise's adjusted total capital minus the minimum amount of adjusted total capital under § 1240.10(b);

(B) The Enterprise's tier 1 capital minus the minimum amount of tier 1 capital under § 1240.10(c); or

(C) The Enterprise's common equity tier 1 capital minus the minimum amount of common equity tier 1 capital under § 1240.10(d).

(ii) Notwithstanding paragraphs (c)(2)(i)(A) through (C) of this section, if the Enterprise's adjusted total capital, tier 1 capital, or common equity tier 1 capital is less than or equal to the Enterprise's minimum adjusted total capital, tier 1 capital, or common equity tier 1 capital, respectively, the Enterprise's capital conservation buffer is zero.

(d)

Leverage buffer

Composition of the leverage buffer.

(2)

Calculation of the leverage buffer.

(ii) Notwithstanding paragraph (d)(2)(i) of this section, if the Enterprise's tier 1 capital is less than or equal to the minimum amount of tier 1 capital under § 1240.10(d), the Enterprise's leverage buffer is zero.

(e)

Countercyclical capital buffer amount

Composition of the countercyclical capital buffer amount.

(2)

Amount

Initial countercyclical capital buffer.

(ii)

Adjustment of the countercyclical capital buffer amount.

(iii)

Range of countercyclical capital buffer amount.

(iv)

Adjustment determination.

(3)

Effective date of adjusted countercyclical capital buffer amount

Increase adjustment.

(ii)

Decrease adjustment.

(iii)

Twelve month sunset.

(f)

Stability capital buffer.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022; 87 FR 33617, June 3, 2022]

Subpart CDefinition of Capital

§ 1240.20

Capital components and eligibility criteria for regulatory capital instruments.

(a)

Regulatory capital components.

(1) Common equity tier 1 capital;

(2) Additional tier 1 capital;

(3) Tier 2 capital;

(4) Core capital; and

(5) Total capital.

(b)

Common equity tier 1 capital.

(1) Any common stock instruments (plus any related surplus) issued by the Enterprise, net of treasury stock, that meet all the following criteria:

(i) The instrument is paid-in, issued directly by the Enterprise, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the Enterprise;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the Enterprise that is proportional with the holder's share of the Enterprise's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of FHFA to the extent otherwise required by law or regulation, and does not contain any term or feature that creates an incentive to redeem;

(iv) The Enterprise did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation;

(v) Any cash dividend payments on the instrument are paid out of the Enterprise's net income, retained earnings, or surplus related to common stock, and are not subject to a limit imposed by the contractual terms governing the instrument.

(vi) The Enterprise has full discretion at all times to refrain from paying any dividends and making any other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the Enterprise;

(vii) Dividend payments and any other distributions on the instrument may be paid only after all legal and contractual obligations of the Enterprise have been satisfied, including payments due on more senior claims;

(viii) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the Enterprise with greater priority in a receivership, insolvency, liquidation, or similar proceeding;

(ix) The paid-in amount is classified as equity under GAAP;

(x) The Enterprise, or an entity that the Enterprise controls, did not purchase or directly or indirectly fund the purchase of the instrument;

(xi) The instrument is not secured, not covered by a guarantee of the Enterprise or of an affiliate of the Enterprise, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(xii) The instrument has been issued in accordance with applicable laws and regulations; and

(xiii) The instrument is reported on the Enterprise's regulatory financial statements separately from other capital instruments.

(2) Retained earnings.

(3) Accumulated other comprehensive income (AOCI) as reported under GAAP.

1

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See

(4) Notwithstanding the criteria for common stock instruments referenced

(c)

Additional tier 1 capital.

(1) Subject to paragraph (e)(2) of this section, instruments (plus any related surplus) that meet the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to general creditors and subordinated debt holders of the Enterprise in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument is not secured, not covered by a guarantee of the Enterprise or of an affiliate of the Enterprise, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iv) The instrument has no maturity date and does not contain a dividend step-up or any other term or feature that creates an incentive to redeem; and

(v) If callable by its terms, the instrument may be called by the Enterprise only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in additional tier 1 capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a-1

et seq.

(A) The Enterprise must receive prior approval from FHFA to exercise a call option on the instrument.

(B) The Enterprise does not create at issuance of the instrument, through any action or

communication, an expectation that the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the Enterprise must either: Replace the instrument to be called with an equal amount of instruments that meet the criteria under paragraph (b) of this section or this paragraph (c);

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(vi) Redemption or repurchase of the instrument requires prior approval from FHFA.

(vii) The Enterprise has full discretion at all times to cancel dividends or other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions on the Enterprise except in relation to any distributions to holders of common stock or instruments that are

pari passu

(viii) Any distributions on the instrument are paid out of the Enterprise's net income, retained earnings, or surplus related to other additional tier 1 capital instruments.

(ix) The instrument does not have a credit-sensitive feature, such as a dividend rate that is reset periodically based in whole or in part on the Enterprise's credit quality, but may have a dividend rate that is adjusted periodically independent of the Enterprise's credit quality, in relation to general market interest rates or similar adjustments.

(x) The paid-in amount is classified as equity under GAAP.

(xi) The Enterprise, or an entity that the Enterprise controls, did not purchase or directly or indirectly fund the purchase of the instrument.

(xii) The instrument does not have any features that would limit or discourage additional issuance of capital by the Enterprise, such as provisions that require the Enterprise to compensate holders of the instrument if a new instrument is issued at a lower price during a specified time frame.

(xiii) If the instrument is not issued directly by the Enterprise or by a subsidiary of the Enterprise that is an operating entity, the only asset of the issuing entity is its investment in the capital of the

Enterprise, and proceeds must be immediately available without limitation to the Enterprise or to the Enterprise's top-tier holding company in a form which meets or exceeds all of the other criteria for additional tier 1 capital instruments.

3

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De minimis

(xiv) The governing agreement, offering circular, or prospectus of an instrument issued after February 16, 2021 must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the Enterprise enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Notwithstanding the criteria for additional tier 1 capital instruments referenced above, an instrument issued by an Enterprise and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (c)(1)(iii) of this section, provided that any repurchase is required solely by virtue of ERISA for an instrument of an Enterprise that is not publicly-traded. In addition, an instrument issued by an Enterprise to its employee stock ownership plan does not violate the criteria in paragraphs (c)(1)(v) or (c)(1)(xi) of this section.

(d)

Tier 2 capital.

(1) Subject to paragraph (e)(2) of this section, instruments (plus related surplus) that meet the following criteria:

(i) The instrument is issued and paid-in.

(ii) The instrument is subordinated to general creditors of the Enterprise.

(iii) The instrument is not secured, not covered by a guarantee of the Enterprise or of an affiliate of the Enterprise, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument in relation to more senior claims.

(iv) The instrument has a minimum original maturity of at least five years. At the beginning of each of the last five years of the life of the instrument, the amount that is eligible to be included in tier 2 capital is reduced by 20 percent of the original amount of the instrument (net of redemptions) and is excluded from regulatory capital when the remaining maturity is less than one year. In addition, the instrument must not have any terms or features that require, or create significant incentives for, the Enterprise to redeem the instrument prior to maturity.

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(v) The instrument, by its terms, may be called by the Enterprise only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called sooner upon the occurrence of an event that would preclude the instrument from being included in tier 2 capital, a tax event. In addition:

(A) The Enterprise must receive the prior approval of FHFA to exercise a call option on the instrument.

(B) The Enterprise does not create at issuance, through action or communication, an expectation the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the Enterprise must either: Replace any amount called with an equivalent amount of an instrument that meets the criteria for regulatory capital under this section;

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(vi) The holder of the instrument must have no contractual right to accelerate payment of principal or interest on the instrument, except in the event of a receivership, insolvency, liquidation, or similar proceeding of the Enterprise.

(vii) The instrument has no credit-sensitive feature, such as a dividend or interest rate that is reset periodically based in whole or in part on the Enterprise's credit standing, but may have a dividend

rate that is adjusted periodically independent of the Enterprise's credit standing, in relation to general market interest rates or similar adjustments.

(viii) The Enterprise, or an entity that the Enterprise controls, has not purchased and has not directly or indirectly funded the purchase of the instrument.

(ix) If the instrument is not issued directly by the Enterprise or by a subsidiary of the Enterprise that is an operating entity, the only asset of the issuing entity is its investment in the capital of the Enterprise, and proceeds must be immediately available without limitation to the Enterprise or the Enterprise's top-tier holding company in a form that meets or exceeds all the other criteria for tier 2 capital instruments under this section.

6

6

de minimis

(x) Redemption of the instrument prior to maturity or repurchase requires the prior approval of FHFA.

(xi) The governing agreement, offering circular, or prospectus of an instrument issued after February 16, 2021 must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the Enterprise enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Any eligible credit reserves that exceed expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of credit risk-weighted assets.

(e)

FHFA approval of a capital element.

(i) Was included in an Enterprise's tier 1 capital or tier 2 capital prior to June 30, 2020 and the underlying instrument may continue to be included under the criteria set forth in this section; or

(ii) Is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a regulatory capital element FHFA determined may be included in regulatory capital

pursuant to paragraph (e)(3) of this section.

(2) An Enterprise may not include an instrument in its additional tier 1 capital or a tier 2 capital unless FHFA has determined that the Enterprise has made appropriate provision, including in any resolution plan of the Enterprise, to ensure that the instrument would not pose a material impediment to the ability of an Enterprise to issue common stock instruments following the appointment of FHFA as conservator or receiver under the Safety and Soundness Act.

(3) After determining that a regulatory capital element may be included in an Enterprise's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, FHFA will make its decision publicly available, including a brief description of the material terms of the regulatory capital element and the rationale for the determination.

(f)

FHFA prior approval.

§ 1240.21

[Reserved]

§ 1240.22

Regulatory capital adjustments and deductions.

(a)

Regulatory capital deductions from common equity tier 1 capital.

(1) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section;

(2) Intangible assets, other than MSAs, net of associated DTLs in accordance with paragraph (e) of this section;

(3) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances and net of DTLs in accordance with paragraph (e) of this section;

(4) Any gain-on-sale in connection with a securitization exposure;

(5) Any defined benefit pension fund net asset, net of any associated DTL in accordance with

paragraph (e) of this section, held by the Enterprise. With the prior approval of FHFA, this deduction is not required for any defined benefit pension fund net asset to the extent the Enterprise has unrestricted and unfettered access to the assets in that fund. An Enterprise must risk weight any portion of the defined benefit pension fund asset that is not deducted under this paragraph (a) as if the Enterprise directly holds a proportional ownership share of each exposure in the defined benefit pension fund.

(6) The amount of expected credit loss that exceeds its eligible credit reserves.

(b)

Regulatory adjustments to common equity tier 1 capital.

(i) An Enterprise must deduct any accumulated net gains and add any accumulated net losses on cash flow hedges included in AOCI that relate to the hedging of items that are not recognized at fair value on the balance sheet.

(ii) An Enterprise must deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the Enterprise's own credit risk. An Enterprise must deduct the difference between its credit spread premium and the risk-free rate for derivatives that are liabilities as part of this adjustment.

(2) [Reserved]

(c)

Deductions from regulatory capital related to investments in capital instruments.

1

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(1) An Enterprise must deduct an investment in the Enterprise's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 1240.20(b)(1);

(2) An Enterprise must deduct an investment in the Enterprise's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(3) An Enterprise must deduct an investment in the Enterprise's own tier 2 capital instruments from its tier 2 capital elements.

(d)

Items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds.

(i) DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An Enterprise is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section) arising from timing differences that the Enterprise could realize through net

(ii) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(2) An Enterprise must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(1) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the Enterprise's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(1) of this section (the 15 percent common equity tier 1 capital deduction threshold).

2

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(3) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an Enterprise may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An Enterprise that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An Enterprise may change its exclusion preference only after obtaining the prior approval of FHFA.

(e)

Netting of DTLs against assets subject to deduction.

(i) The DTL is associated with the asset; and

(ii) The DTL would be extinguished if the associated asset becomes impaired or is derecognized under GAAP.

(2) A DTL may only be netted against a single asset.

(3) For purposes of calculating the amount of DTAs subject to the threshold deduction in paragraph (d) of this section, the amount of DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and of DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances, may be offset by DTLs (that have not been netted against assets subject to deduction pursuant to paragraph (e)(1) of this section) subject to the conditions set forth in this paragraph (e).

(i) Only the DTAs and DTLs that relate to taxes levied by the same taxation authority and that are eligible for offsetting by that authority may be offset for purposes of this deduction.

(ii) The amount of DTLs that the Enterprise nets against DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and against DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances, must be allocated in proportion to the amount of DTAs that arise from net operating loss and tax credit carryforwards (net of any related valuation allowances, but before any offsetting of DTLs) and of DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks (net of any related valuation allowances, but before any offsetting of DTLs), respectively.

(4) An Enterprise must net DTLs against assets subject to deduction under this section in a consistent manner from reporting period to reporting period. An Enterprise may change its preference regarding the manner in which it nets DTLs against specific assets subject to deduction

under this section only after obtaining the prior approval of FHFA.

(f)

Insufficient amounts of a specific regulatory capital component to effect deductions.

(g)

Treatment of assets that are deducted.

Subpart DRisk-Weighted AssetsStandardized Approach

§ 1240.30

Applicability.

(a) This subpart sets forth methodologies for determining risk-weighted assets for purposes of the generally applicable risk-based capital requirements for the Enterprises.

(b) This subpart is also applicable to covered positions, as defined in subpart F of this part.

Risk-Weighted Assets for General Credit Risk

§ 1240.31

Mechanics for calculating risk-weighted assets for general credit risk.

(a)

General risk-weighting requirements.

(1) An Enterprise must determine the exposure amount of each mortgage exposure, each other on-balance sheet exposure, each OTC derivative contract, and each off-balance sheet commitment, trade and transaction-related contingency, guarantee, repo-style transaction, forward agreement, or other similar transaction that is not:

(i) An unsettled transaction subject to § 1240.40;

(ii) A cleared transaction subject to § 1240.37;

(iii) A default fund contribution subject to § 1240.37;

(iv) A retained CRT exposure, acquired CRT exposure, or other securitization exposure subject to §§ 1240.41 through 1240.46; or

(v) An equity exposure (other than an equity OTC derivative contract) subject to §§ 1240.51 and

1240.52.

(2) An Enterprise must multiply each exposure amount by the risk weight appropriate to the exposure based on the exposure type or counterparty, eligible guarantor, or financial collateral to determine the risk-weighted asset amount for each exposure.

(b)

Total risk-weighted assets for general credit risk.

Effective Date Note:

At 88 FR 83476, Nov. 30, 2023, § 1240.31 was amended in paragraph (a)(1)(iv) removing the word or after the semicolon, in paragraph (a)(1)(v) removing the period after 1240.52 and adding ; or in its place; and adding paragraph (a)(1)(vi)., effective Apr. 1, 2024. For the convenience of the user, the added text is set forth as follows:

§ 1240.31

Mechanics for calculating risk-weighted assets for general credit risk.

(a) * * *

(1) * * *

(vi) CVA risk-weighted assets subject to § 1240.36(d).

§ 1240.32

General risk weights.

(a)

Exposures to the U.S. government.

(i) An exposure to the U.S. government, its central bank, or a U.S. government agency; and

(ii) The portion of an exposure that is directly and unconditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency. This includes a deposit or other exposure, or the portion of a deposit or other exposure, that is insured or otherwise unconditionally guaranteed by the FDIC or NCUA.

(2) An Enterprise must assign a 20 percent risk weight to the portion of an exposure that is

conditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency. This includes an exposure, or the portion of an exposure, that is conditionally guaranteed by the FDIC or NCUA.

(b)

Certain supranational entities and multilateral development banks (MDBs).

(c)

Exposures to GSEs.

(2) An Enterprise must assign a 20 percent risk weight to an exposure to another GSE, including an MBS guaranteed by the other Enterprise.

(d)

Exposures to depository institutions and credit unions.

(2) An Enterprise must assign a 100 percent risk weight to an exposure to a financial institution if the exposure may be included in that financial institution's capital unless the exposure is:

(i) An equity exposure; or

(ii) Deducted from regulatory capital under § 1240.22.

(e)

Exposures to U.S. public sector entities (PSEs).

(2) An Enterprise must assign a 50 percent risk weight to a revenue obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(f)

Corporate exposures.

(2) An Enterprise must assign a 2 percent risk weight to an exposure to a QCCP arising from the Enterprise posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 1240.37(b)(3)(i)(A) and a 4 percent risk weight to an exposure to a QCCP arising from the Enterprise posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 1240.37(b)(3)(i)(B).

(3) An Enterprise must assign a 2 percent risk weight to an exposure to a QCCP arising from the Enterprise posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 1240.37(c)(3)(i).

(g)

Residential mortgage exposures

Single-family mortgage exposures.

(2)

Multifamily mortgage exposures.

(h)

Past due exposures.

(1) An Enterprise must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) An Enterprise may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § 1240.38 if the guarantee or credit derivative meets the requirements of that section; and

(3) An Enterprise may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § 1240.39 if the collateral meets the requirements of that section.

(i)

Other assets.

(2) An Enterprise must assign a 20 percent risk weight to cash items in the process of collection.

(3) An Enterprise must assign a 100 percent risk weight to DTAs arising from temporary differences that the Enterprise could realize through net operating loss carrybacks.

(4) An Enterprise must assign a 250 percent risk weight to the portion of

(i) MSAs; and

(ii) DTAs arising from temporary differences that the Enterprise could not realize through net

operating loss carrybacks.

(5) An Enterprise must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 1240.22.

(j)

Insurance assets.

(2) An Enterprise must assign a zero percent risk weight to an asset that is held in a non-guaranteed separate account.

Effective Date Note:

At 88 FR 83476, Nov. 30, 2023, § 1240.32 was amended by redesignating paragraph (c)(2) as paragraph (c)(3), adding new paragraph (c)(2), and revising redesignated paragraph (c)(3) and redesignating paragraph (i)(5) as paragraph (i)(6) and adding new paragraph (i)(5), effective Apr. 1, 2024. For the convenience of the user, the added and revised text is set forth as follows:

§ 1240.32

General risk weights.

(c) * * *

(2) An Enterprise must assign a 5 percent risk weight to an exposure to the other Enterprise in a commingled security.

(3) An Enterprise must assign a 20 percent risk weight to an exposure to another GSE, including an MBS guaranteed by the other Enterprise, except for exposures under paragraph (c)(2) of this section.

(i) * * *

(5) An Enterprise must assign a 20 percent risk weight to guarantee assets.

§ 1240.33

Single-family mortgage exposures.

(a)

Definitions.

Adjusted MTMLTV

(i) The MTMLTV of the single-family mortgage exposure (or, if the loan age of the single-family mortgage exposure is less than 6, the OLTV of the single-family mortgage exposure); divided by

(ii) The amount equal to 1 plus the single-family countercyclical adjustment as of that time.

Approved insurer

Cancelable mortgage insurance

Charter-level coverage

Cohort burnout

Coverage percent

COVID-19-related forbearance

Days past due

Debt-to-income ratio (DTI)

Deflated HPI

(i) The national, not-seasonally adjusted Expanded-Data FHFA House Price Index® as of the end of the preceding calendar quarter; divided by

(ii) The average of the three monthly observations of the preceding calendar quarter from the non-seasonally adjusted Consumer Price Index for All Urban Consumers, U.S. City Average, All Items Less Shelter.

Guide

Guide-level coverage

Interest-only (IO)

Loan age

Loan-level credit enhancement

(i) Mortgage insurance; or

(ii) A participation agreement.

Loan documentation

Loan purpose

Long-term HPI trend

e

(0.002619948*t)

Where

t

1

1

Long-term trend departure

(i) The deflated HPI as of that time divided by the long-term HPI trend as of that time; minus

(ii) 1.0.

MI cancelation feature

Modification

Modified re-performing loan (modified RPL)

Months since last modification

Mortgage concentration risk

MTMLTV

(i) The unpaid principal balance of the single-family mortgage exposure; divided by

(ii) The amount equal to:

(A) The unpaid principal balance of the single-family mortgage exposure at origination; divided by

(B) The OLTV of the single-family mortgage exposure; multiplied by

(C) The most recently available FHFA Purchase-only State-level House Price Index of the State in which the property securing the single-family mortgage exposure is located; divided by

(D) The FHFA Purchase-only State-level House Price Index, as of date of the origination of the single-family mortgage exposure, in which the property securing the single-family mortgage

exposure is located.

Non-cancelable mortgage insurance

Non-modified re-performing loan (non-modified RPL)

Non-performing loan (NPL)

Occupancy type

Original credit score

OLTV (original loan-to-value)

(i) The unpaid principal balance of the single-family mortgage exposure at origination; divided by

(ii) The lesser of:

(A) The appraised value of the property securing the single-family mortgage exposure; and

(B) The sale price of the property securing the single-family mortgage exposure.

Origination channel

Participation agreement

Past due

Payment change from modification

(i) The amount equal to:

(A) The monthly payment of a single-family mortgage exposure after a modification; divided by

(B) The monthly payment of the single-family mortgage exposure before the modification; minus

(ii) 1.0.

Performing loan

Previous maximum days past due

Product type

Property type

Refinance opportunity

Refreshed credit score

Single-family countercyclical adjustment

(i) If the long-term trend departure as of that time is greater than 5 percent, the percent amount equal to:

(A) 1.05 multiplied by the long-term HPI trend, as of that time, divided by the deflated HPI, as of that time, minus

(B) 1.0.

(ii) If the long-term trend departure as of that time is less than 5 percent, the percent amount equal to:

(A) 0.95 multiplied by the long-term HPI trend, as of that time, divided by the deflated HPI, as of that time, minus

(B) 1.0.

Streamlined refi

Subordination

Table 1 to Paragraph

(a)

Defined term

Permissible values

Additional instructions

Cohort burnout

No burnout, if the single-family mortgage exposure has not had a refinance opportunity since the loan age of the single-family mortgage exposure was 6

High if unable to determine.

Low, if the single-family mortgage exposure has had 12 or fewer refinance opportunities since the loan age of the single-family mortgage exposure was 6

Medium, if the single-family mortgage exposure has had between 13 and 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6

High, if the single-family mortgage exposure has had more than 24 refinance opportunities since the

loan age of the single-family mortgage exposure was 6

Coverage percent

0 percent <= coverage percent <= 100 percent

0 percent if outside of permissible range or unable to determine.

Days past due

Non-negative integer

210 if negative or unable to determine.

Debt-to-income (DTI) ratio

0 percent < DTI < 100 percent

42 percent if outside of permissible range or unable to determine.

Interest-only (IO)

Yes, no

Yes if unable to determine.

Loan age

0 <= loan age <= 500

500 if outside of permissible range or unable to determine.

Loan documentation

None, low, full

None if unable to determine.

Loan purpose

Purchase, cashout refinance, rate/term refinance

Cashout refinance if unable to determine.

MTMLTV

0 percent < MTMLTV <= 300 percent

If the property securing the single-family mortgage exposure is located in Puerto Rico or the U.S. Virgin Islands, use the FHFA House Price Index of the United States.

If the property securing the single-family mortgage exposure is located in Guam, use the FHFA Purchase-only State-level House Price Index of Hawaii.

If the single-family mortgage exposure was originated before 1991, use the Enterprise's proprietary housing price index.

Use geometric interpolation to convert quarterly housing price index data to monthly data.

300 percent if outside of permissible range or unable to determine.

Mortgage concentration risk

High, not high

High if unable to determine.

MI cancellation feature

Cancelable mortgage insurance, non-cancelable mortgage insurance

Cancelable mortgage insurance, if unable to determine.

Occupancy type

Investment, owner-occupied, second home

Investment if unable to determine.

OLTV

0 percent < OLTV <= 300 percent

300 percent if outside of permissible range or unable to determine.

Original credit score

300 <= original credit score <= 850

If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single original credit score:

If there are credit scores from two repositories, take the lower credit score.

If there are credit scores from three repositories, use the middle credit score.

If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score.

If there are multiple borrowers, use the following logic to determine a single original credit score:

Using the logic above, determine a single credit score for each borrower.

Select the lowest single credit score across all borrowers.

600 if outside of permissible range or unable to determine.

Origination channel

Retail, third-party origination (TPO)

TPO includes broker and correspondent channels.

TPO if unable to determine.

Payment change from modification

80 percent < payment change from modification < 50 percent

If the single-family mortgage exposure initially had an adjustable or step-rate feature, the monthly payment after a permanent modification is calculated using the initial modified rate.

0 percent if unable to determine.

79 percent if less than or equal to 80 percent.

49 percent if greater than or equal to 50 percent.

Previous maximum days past due

Non-negative integer

181 months if negative or unable to determine.

Product type

FRM30 means a fixed-rate single-family mortgage exposure with an original amortization term greater than 309 months and less than or equal to 429 months

Product types other than FRM30, FRM20, FRM15 or ARM 1/1 should be assigned to FRM30.

Use the post-modification product type for modified mortgage exposures.

ARM 1/1 if unable to determine.

FRM20 means a fixed-rate single-family mortgage exposure with an original amortization term greater than 189 months and less than or equal to 309 months

FRM15 means a fixed-rate single-family mortgage exposure with an original amortization term less than or equal to 189 months

ARM 1/1 is an adjustable-rate single-family mortgage exposure that has a mortgage rate and required payment that adjust annually

Property type

1-unit, 2-4 units, condominium, manufactured home

Use condominium for cooperatives.

2-4 units if unable to determine.

Refreshed credit score

300 <= refreshed credit score <= 850

If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single refreshed credit score:

If there are credit scores from two repositories, take the lower credit score.

If there are credit scores from three repositories, use the middle credit score.

If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score.

If there are multiple borrowers, use the following logic to determine a single Original Credit Score:

Using the logic above, determine a single credit score for each borrower.

Select the lowest single credit score across all borrowers.

600 if outside of permissible range or unable to determine.

Streamlined refi

Yes, no

No if unable to determine.

Subordination

0 percent <= Subordination <= 80 percent

80 percent if outside permissible range.

(b)

Risk weight

In general.

(i) The base risk weight for the single-family mortgage exposure as determined under paragraph (c) of this section; multiplied by

(ii) The combined risk multiplier for the single-family mortgage exposure as determined under paragraph (d) of this section; multiplied by

(iii) The adjusted credit enhancement multiplier for the single-family mortgage exposure as determined under paragraph (e) of this section.

(2)

Minimum risk weight.

(c)

Base risk weight

Performing loan.

(i) The original credit score of the single-family mortgage exposure, if the loan age of the single-family mortgage exposure is less than 6; or

(ii) The refreshed credit score of the single-family mortgage exposure.

ER17DE20.012

(2)

Non-modified RPL.

ER17DE20.013

(3)

Modified RPL.

(i) The months since last modification of the modified RPL; and

(ii) The number of scheduled payment dates since the modified RPL was last an NPL.

ER17DE20.014

(4)

NPL.

ER17DE20.015

(d)

Combined risk multiplier

In general.

(2)

Maximum combined risk multiplier.

Table 6 to Paragraph

(d)(2)

Risk factor

Value or range

Single-family segment

Performing

loan

Non-

modified

RPL

Modified

RPL

NPL

Loan Purpose

Purchase

1.0

1.0

1.0

Cashout refinance

1.4

1.4

1.4

Rate/term refinance

1.3

1.2

1.3

Occupancy Type

Owner-occupied or second home

1.0

1.0

1.0

1.0

Investment

1.2

1.5

1.3

1.2

Property Type

1-unit

1.0

1.0

1.0

1.0

2-4 unit

1.4

1.4

1.3

1.1

Condominium

1.1

1.0

1.0

1.0

Manufactured home

1.3

1.8

1.6

1.2

Origination Channel

Retail

1.0

1.0

1.0

1.0

TPO

1.1

1.1

1.1

1.0

DTI

DTI <= 25%

0.8

0.9

0.9

25% < DTI <= 40%

1.0

1.0

1.0

DTI >40%

1.2

1.2

1.1

Product Type

FRM30

1.0

1.0

1.0

1.0

ARM1/1

1.7

1.1

1.0

1.1

FRM15

0.3

0.3

0.5

0.5

FRM20

0.6

0.6

0.5

0.8

Subordination

No subordination

1.0

1.0

1.0

30% < OLTV <= 60% and 0% <subordination <= 5%

1.1

0.8

1.0

30% < OLTV <= 60% and subordination >5%

1.5

1.1

1.2

OLTV >60% and 0% <subordination <= 5%

1.1

1.2

1.1

OLTV >60% and subordination >5%

1.4

1.5

1.3

Loan Age

Loan age <= 24 months

1.0

24 months <loan age <= 36 months

0.95

36 months <loan Age <= 60 months

0.80

Loan age >60 months

0.75

Cohort Burnout

No burnout

1.0

Low

1.2

Medium

1.3

High

1.4

Interest-only

No IO

1.0

1.0

1.0

Yes IO

1.6

1.4

1.1

Loan Documentation

Full

1.0

1.0

1.0

None or low

1.3

1.3

1.2

Streamlined Refi

No

1.0

1.0

1.0

Yes

1.0

1.2

1.1

Refreshed Credit Score for Modified RPLs and Non-modified RPLs

Refreshed credit score <620

620 <= refreshed credit score <640

1.6

1.3

1.4

1.2

640 <= refreshed credit score <660

1.2

1.1

660 <= refreshed credit score <700

1.0

1.0

700 <= refreshed credit score <720

0.7

0.8

720 <= refreshed credit score <740

0.6

0.7

740 <= refreshed credit score <760

0.5

0.6

760 <= refreshed credit score <780

0.4

0.5

Refreshed credit score >= 780

0.3

0.4

Payment Change from Modification

Payment change >= 0%

1.1

20% <= payment change <0%

1.0

30% <= payment change < 20%

0.9

Payment change < 30%

0.8

Previous Maximum Days Past Due

0-59 days

1.0

1.0

60-90 days

1.2

1.1

91-150 days

1.3

1.1

151+ days

1.5

1.1

Refreshed Credit Score for NPLs

Refreshed credit score <580

1.2

580 <= refreshed credit score <640

1.1

640 <= refreshed credit score <700

1.0

700 <= refreshed credit score <720

0.9

720 <= refreshed credit score <760

0.8

760 <= refreshed credit score <780

0.7

Refreshed credit score >= 780

0.5

(e)

Credit enhancement multiplier

Amount

In general.

(A) 1.0 minus the credit enhancement multiplier for the single-family mortgage exposure as determined under paragraph (e)(2) of this section; multiplied by

(B) 1.0 minus the counterparty haircut for the loan-level credit enhancement as determined under paragraph (e)(3) of this section.

(ii)

No loan-level credit enhancement.

(2)

Credit enhancement multiplier.

(ii) Subject to paragraph (e)(2)(iii) of this section, the credit enhancement multiplier for

(A) A performing loan, non-modified RPL, or modified RPL that is subject to non-cancelable mortgage insurance is set forth on Table 7 to paragraph (e)(2)(iii)(E) of this section;

(B) A performing loan or non-modified RPL that is subject to cancelable mortgage insurance is set forth on Table 8 to paragraph (e)(2)(iii)(E) of this section;

(C) A modified RPL with a 30-year post-modification amortization that is subject to cancelable

mortgage insurance is set forth on Table 9 to paragraph (e)(2)(iii)(E) of this section;

(D) A modified RPL with a 40-year post-modification amortization that is subject to cancelable mortgage insurance is set forth on Table 10 to paragraph (e)(2)(iii)(E) of this section; and

(E) NPL, whether subject to non-cancelable mortgage insurance or cancelable mortgage insurance, is set forth on Table 11 to paragraph (e)(2)(iii)(E) of this section.

(iii) Notwithstanding anything to the contrary in this paragraph (e), for purposes of paragraph (e)(2)(ii) of this section:

(A) The OLTV of a single-family mortgage exposure will be deemed to be 80 percent if the single-family mortgage exposure has an OLTV less than or equal to 80 percent.

(B) If the single-family mortgage exposure has an interest-only feature, any cancelable mortgage insurance will be deemed to be non-cancelable mortgage insurance.

(C) If the coverage percent of the mortgage insurance is greater than charter-level coverage and less than guide-level coverage, the credit enhancement multiplier is the amount equal to a linear interpolation between the credit enhancement multiplier of the single-family mortgage exposure for charter-level coverage and the credit enhancement multiplier of the single-family mortgage exposure for guide-level coverage.

(D) If the coverage percent of the mortgage insurance is less than charter-level coverage, the credit enhancement multiplier is the amount equal to the midpoint of a linear interpolation between a credit enhancement multiplier of 1.0 and the credit enhancement

(E) If the coverage percent of the mortgage insurance is greater than guide-level coverage, the credit enhancement multiplier is determined as if the coverage percent were guide-level coverage.

ER17DE20.018

ER17DE20.019

ER17DE20.020

ER17DE20.021

ER17DE20.022

(3)

Credit enhancement counterparty haircut

Counterparty rating

In general.

(

1

(

2

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3

(

4

(

5

(

6

(

7

(

8

(B)

Required considerations.

1

(

2

(ii)

Counterparty haircut.

ER17DE20.023

(f)

COVID-19-related forbearances

During forbearance.

(i) Is subject to a COVID-19-related forbearance; or

(ii) Was subject to a COVID-19-related forbearance at any time in the prior 6 calendar months and is subject to a trial modification plan.

(2)

After forbearance.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022]

§ 1240.33, Nt.

Effective Date Note:

At 88 FR 83476, Nov. 30, 2023, § 1240.33 was amended in paragraph (a) by revising paragraph (ii) in the definition of Adjusted MTMLTV and revising table 1 to paragraph (a), effective Apr. 1, 2024. For the convenience of the user, the revised text is set forth as follows:

§ 1240.33

Single-family mortgage exposures.

(a) * * *

Adjusted MTMLTV

(ii) The amount equal to 1 plus either:

(A) The single-family countercyclical adjustment available at the time of the exposure's origination if the loan age of the single-family mortgage exposure is less than or equal to 5; or

(B) The single-family countercyclical adjustment available as of that time if the loan age of the single-family mortgage exposure is greater than or equal to 6.

Table 1 to Paragraph (

a

Defined term

Permissible values

Additional instructions

Cohort burnout

No burnout, if the single-family mortgage exposure has not had a refinance opportunity since the loan age of the single-family mortgage exposure was 6.

High if unable to determine.

Low, if the single-family mortgage exposure has had 12 or fewer refinance opportunities since the loan age of the single-family mortgage exposure was 6

Medium, if the single-family mortgage exposure has had between 13 and 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6

High, if the single-family mortgage exposure has had more than 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6

Coverage percent

0 percent <= coverage percent <= 100 percent

0 percent if outside of permissible range or unable to determine.

Days past due

Non-negative integer

210 if negative or unable to determine.

Debt-to-income (DTI) ratio

0 percent < DTI < 100 percent

42 percent if outside of permissible range or unable to determine.

Interest-only (IO)

Yes, no

Yes if unable to determine.

Loan age

0 <= loan age <= 500

500 if outside of permissible range or unable to determine.

Loan documentation

None, low, full

None if unable to determine.

Loan purpose

Purchase, cashout refinance, rate/term refinance

Cashout refinance if unable to determine.

MTMLTV

0 percent < MTMLTV <= 300 percent

If the property securing the single-family mortgage exposure is located in Puerto Rico or the U.S. Virgin Islands, use the FHFA House Price Index of the United States.

If the property securing the single-family mortgage exposure is located in Hawaii, use the FHFA Purchase-only State-level House Price Index of Guam.

If the single-family mortgage exposure was originated before 1991, use the Enterprise's proprietary housing price index.

Use geometric interpolation to convert quarterly housing price index data to monthly data.

300 percent if outside of permissible range or unable to determine.

Mortgage concentration risk

High, not high

High if unable to determine.

MI cancellation feature

Cancellable mortgage insurance, non-cancellable mortgage insurance

Cancellable mortgage insurance, if unable to determine.

Occupancy type

Investment, owner-occupied, second home

Investment if unable to determine.

OLTV

0 percent < OLTV <= 300 percent

300 percent if outside of permissible range or unable to determine.

Original credit score

300 <= original credit score <= 850

If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single original credit score:

If there are credit scores from two repositories, take the lower credit score.

If there are credit scores from three repositories, use the middle credit score.

If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score.

If there are multiple borrowers, use the following logic to determine a single original credit score:

Using the logic above, determine a single credit score for each borrower.

Select the lowest single credit score across all borrowers.

The original credit score for the single-family mortgage exposure is 680 if the Enterprise has verified that no borrower has a credit score at any of the three repositories.

600 if outside of permissible range or unable to determine.

Origination channel

Retail, third-party origination (TPO)

TPO includes broker and correspondent channels. TPO if unable to determine.

Payment change from modification

80 percent < payment change from modification < 50 percent

If the single-family mortgage exposure initially had an adjustable or step-rate feature, the monthly payment after a permanent modification is calculated using the initial modified rate.

0 percent if unable to determine. 79 percent if less than or equal to 80 percent.

49 percent if greater than or equal to 50 percent.

Previous maximum days past due

Non-negative integer

181 months if negative or unable to determine.

Product type

FRM30 means a fixed-rate single-family mortgage exposure with an original amortization term greater than 309 months and less than or equal to 429 months

FRM20 means a fixed-rate single-family mortgage exposure with an original amortization term greater than 189 months and less than or equal to 309 months

FRM15 means a fixed-rate single-family mortgage exposure with an amortization term less than or equal to 189 months

ARM1/1 is an adjustable-rate single-family mortgage exposure that has a mortgage rate and required payment that adjust annually

Product types other than FRM30, FRM20, FRM15 or ARM 1/1 should be assigned to FRM30.

Use the post-modification product type for modified mortgage exposures.

ARM 1/1 if unable to determine.

Property type

1-unit, 2-4 units, condominium, manufactured home

Use condominium for cooperatives.

2-4 units if unable to determine.

Refreshed credit score

300 <= refreshed credit score <= 850

If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single refreshed credit score:

If there are credit scores from two repositories, take the lower credit score.

If there are credit scores from three repositories, use the middle credit score.

If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score.

If there are multiple borrowers, use the following logic to determine a single Refreshed Credit Score:

Using the logic above, determine a single credit score for each borrower.

Select the lowest single credit score across all borrowers.

600 if outside of permissible range or unable to determine.

Streamlined refi

Yes, no

No if unable to determine.

Subordination

0 percent <= Subordination <= 80 percent

80 percent if outside permissible range.

§ 1240.34

Multifamily mortgage exposures.

(a)

Definitions.

Acquisition debt-service-coverage ratio (acquisition DSCR)

(i) The net operating income (NOI) (or, if not available, the net cash flow) of the multifamily property that secures the multifamily mortgage exposure, at the time of the acquisition by the Enterprise (or, if not available, at the time of the underwriting or origination) of the multifamily mortgage exposure; divided by

(ii) The scheduled periodic payment on the multifamily mortgage exposure (or, if interest-only, fully amortizing payment), at the time of the acquisition by the Enterprise (or, if not available, at the time of the origination) of the multifamily mortgage exposure.

Acquisition loan-to-value (acquisition LTV)

(i) The unpaid principal balance of the multifamily mortgage exposure; divided by

(ii) The value of the multifamily property securing the multifamily mortgage exposure.

Debt-service-coverage ratio

DSCR)

(i) The acquisition DSCR of the multifamily mortgage exposure if the loan age of the multifamily mortgage exposure is less than 6; or

(ii) The MTMDSCR of the multifamily mortgage exposure.

Interest-only (IO)

Loan age

Loan term

LTV

(i) The acquisition LTV of the multifamily mortgage exposure if the loan age of the multifamily mortgage exposure is less than 6, or

(ii) The MTMLTV of the multifamily mortgage exposure.

Mark-to-market debt-service coverage ratio (MTMDSCR)

(i) The net operating income (or, if not available, the net cash flow) of the multifamily property that secures the multifamily mortgage exposure, as reported on the most recently available property operating statement; divided by

(ii) The scheduled periodic payment on the multifamily mortgage exposure (or, for interest-only, fully amortizing payment), as reported on the most recently available property operating statement.

Mark-to-market loan-to-value (MTMLTV)

(i) The unpaid principal balance of the multifamily mortgage exposure; divided by

(ii) The current value of the property security the multifamily mortgage exposure, estimated using either:

(A) The acquisition property value adjusted using a multifamily property value index; or

(B) The property value estimated based on net operating income and capitalization rate indices.

Multifamily adjustable-rate exposure

Multifamily fixed-rate exposure

(i) A multifamily mortgage exposure that has an interest rate that is fixed over the life of the loan; and

(ii) A multifamily mortgage exposure that has an interest rate that may increase or decrease in the future, but is fixed at that time.

Net cash flow

(i) The net operating income of the multifamily mortgage exposure; minus

(ii) Reserves for capital improvements; minus

(iii) Other expenses not included in net operating income required for the proper operation of the multifamily property securing the multifamily mortgage exposure, including any commissions paid to leasing agents in securing renters and special improvements to the property to accommodate the needs of certain renters.

Net operating income

(i) The rental income generated by the multifamily property securing the multifamily mortgage exposure; minus

(ii) The vacancy and property operating expenses of the multifamily property securing the multifamily mortgage exposure.

Original amortization term

Original loan size

Payment performance

Supplemental mortgage exposure

Unpaid principal balance (UPB)

ER17DE20.024

(b)

Risk weight

In general.

(i) The base risk weight for the multifamily mortgage exposure as determined under paragraph (c) of this section; multiplied by

(ii) The combined risk multiplier for the multifamily mortgage exposure as determined under paragraph (d) of this section.

(2)

Minimum risk weight.

(3)

Loan groups.

(i) A multifamily mortgage exposure-specific base risk weight must be determined under paragraph (c) of this section using for each of these multifamily mortgage exposures a single DSCR and single LTV, both calculated as if all of the multifamily mortgage exposures secured by the multifamily property were consolidated into a single multifamily mortgage exposure; and

(ii) A multifamily mortgage exposure-specific combined risk multiplier must be determined under paragraph (d) of this section based on the risk characteristics of the multifamily mortgage exposure (except with respect to the loan size multiplier, which would be determined using the aggregate unpaid principal balance of these multifamily mortgage exposures).

(c)

Base risk weight

Multifamily fixed-rate exposure.

ER17DE20.025

(2)

Multifamily adjustable-rate exposure.

ER17DE20.026

(d)

Combined risk multiplier.

ER17DE20.027

§ 1240.34, Nt.

Effective Date Note:

At 88 FR 83478, Nov. 30, 2023, § 1240.34 was amended by adding in alphabetical order definitions for Affordable unit and Government subsidy in paragraph (a) and revising table 1 to paragraph (a) and table 4 to paragraph (d), effective Apr. 1, 2024. For the convenience of the

§ 1240.34

Multifamily mortgage exposures.

(a) * * *

Affordable unit

Government subsidy

(i) At least 20 percent of the property's units are restricted to be affordable units per a regulatory agreement, recorded use restriction, a housing-assistance payments contract, or other restrictions codified in loan agreements; and

(ii) The property benefits from one of the following government programs:

(A) Low Income Housing Tax Credits (LIHTC);

(B) Section 8 project-based rental assistance;

(C) Section 515 Rural Rental Housing Loans; or

(D) State/Local affordable housing programs that require the provision of affordable housing for the life of the loan.

Table 1 to Paragraph (a)Permissible Values and Additional Instructions

ER30NO23.028

(d) * * *

Table 4 to Paragraph (d)Multifamily Risk Multipliers

ER30NO23.029

§ 1240.35

Off-balance sheet exposures.

(a)

General.

(2) Where an Enterprise commits to provide a commitment, the Enterprise may apply the lower of the two applicable CCFs.

(3) Where an Enterprise provides a commitment structured as a syndication or participation, the Enterprise is only required to calculate the exposure amount for its pro rata share of the commitment.

(4) Where an Enterprise provides a commitment or enters into a repurchase agreement and such commitment or repurchase agreement, the exposure amount shall be no greater than the maximum contractual amount of the commitment or repurchase agreement, as applicable.

(b)

Credit conversion factors

Zero percent CCF.

(2)

20 percent CCF.

(3)

50 percent CCF.

(4)

100 percent CCF.

(i) Guarantees;

(ii) Repurchase agreements (the off-balance sheet component of which equals the sum of the current fair values of all positions the Enterprise has sold subject to repurchase);

(iii) Off-balance sheet securities lending transactions (the off-balance sheet component of which equals the sum of the current fair values of all positions the Enterprise has lent under the

transaction);

(iv) Off-balance sheet securities borrowing transactions (the off-balance sheet component of which equals the sum of the current fair values of all non-cash positions the Enterprise has posted as collateral under the transaction); and

(v) Forward agreements.

Effective Date Note:

At 88 FR 83480, Nov. 30, 2023, § 1240.35 was amended by revising paragraphs (b)(3) and (b)(4)(i), effective Apr. 1, 2024. For the convenience of the user, the revised text is set forth as follows:

§ 1240.35

Off-balance sheet exposures.

(b) * * *

(3)

50 percent CCF.

(i) The amount of commitments with an original maturity of more than one year that are not unconditionally cancelable by the Enterprise; and

(ii) Guarantees on exposures to the other Enterprise in commingled securities.

(4) * * *

(i) Guarantees, except guarantees included in paragraph (b)(3)(ii) of this section;

§ 1240.36

Derivative contracts.

(a)

Exposure amount for derivative contracts.

(b)

Current exposure methodology exposure amount

Single OTC derivative contract.

(i)

Current credit exposure.

(ii)

PFE.

(B) For purposes of calculating either the PFE under this paragraph (b)(1)(ii) or the gross PFE under paragraph (b)(2)(ii)(A) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency.

(C) For an OTC derivative contract that does not fall within one of the specified categories in table 1 to paragraph (b)(1)(ii)(E) of this section, the PFE must be calculated using the appropriate other conversion factor.

(D) An Enterprise must use an OTC derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

(E) The PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

ER17DE20.028

(2)

Multiple OTC derivative contracts subject to a qualifying master netting agreement.

(i)

Net current credit exposure.

(ii)

Adjusted sum of the PFE amounts.

(A) Agross = the gross PFE (that is, the sum of the PFE amounts as determined under paragraph (b)(1)(ii) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

(B) Net-to-gross Ratio (NGR) = the ratio of the net current credit exposure to the gross current credit

exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (b)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(c)

Recognition of credit risk mitigation of collateralized OTC derivative contracts.

(2) As an alternative to the simple approach, an Enterprise may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-fair value on a daily basis and subject to a daily margin maintenance requirement by applying a risk weight to the uncollateralized portion of the exposure, after adjusting the exposure amount calculated under paragraph (b)(1) or (2) of this section using the collateral haircut approach in § 1240.39(c). The Enterprise must substitute the exposure amount calculated under paragraph (b)(1) or (2) of this section for E in the equation in § 1240.39(c)(2).

(d)

Counterparty credit risk for credit derivatives

Protection purchasers.

(2)

Protection providers.

(ii) The provisions of this paragraph (d)(2) apply to all relevant counterparties for risk-based capital purposes.

(e) [Reserved]

(f)

Clearing member Enterprise's exposure amount.

1/2

ER17DE20.029

Where H = the holding period greater than or equal to five days.

(2) Additionally, FHFA may require the Enterprise to set a longer holding period if FHFA determines

that a longer period is appropriate due to the nature, structure, or characteristics of the transaction or is commensurate with the risks associated with the transaction.

§ 1240.36, Nt.

Effective Date Note:

At 88 FR 83481, Nov. 30, 2023, § 1240.36 was revised, effective Jan. 1, 2026. For the convenience of the user, the revised text is set forth as follows:

§ 1240.36

Derivative contracts.

(a)

Exposure amount for derivative contracts.

(b)

Methodologies for collateral recognition.

(2) An Enterprise must use the methodology in paragraph (c) of this section to calculate EAD for an OTC derivative contract or a set of OTC derivative contracts subject to a qualifying master netting agreement.

(3) An Enterprise must also use the methodology in paragraph (d) of this section to calculate the risk-weighted asset amounts for CVA for OTC derivatives.

(c)

EAD for derivative contracts

Options for determining EAD.

(2)

Definitions.

(i)

End date

(ii)

Start date

(iii)

Hedging set

(A) With respect to interest rate derivative contracts, all such contracts within a netting set that reference the same reference currency;

(B) With respect to exchange rate derivative contracts, all such contracts within a netting set that reference the same currency pair;

(C) With respect to credit derivative contracts, all such contracts within a netting set;

(D) With respect to equity derivative contracts, all such contracts within a netting set;

(E) With respect to a commodity derivative contract, all such contracts within a netting set that reference one of the following commodity categories: Energy, metal, agricultural, or other commodities;

(F) With respect to basis derivative contracts, all such contracts within a netting set that reference the same pair of risk factors and are denominated in the same currency; or

(G) With respect to volatility derivative contracts, all such contracts within a netting set that reference one of interest rate, exchange rate, credit, equity, or commodity risk factors, separated according to the requirements under paragraphs (c)(2)(iii)(A) through (E) of this section.

(H) If the risk of a derivative contract materially depends on more than one of interest rate, exchange rate, credit, equity, or commodity risk factors, FHFA may require an Enterprise to include the derivative contract in each appropriate hedging set under paragraphs (c)(2)(iii)(A) through (E) of this section.

(3)

Credit derivatives.

(i) An Enterprise that purchases a credit derivative that is recognized under § 1240.38 as a credit risk mitigant for an exposure is not required to calculate a separate counterparty credit risk capital requirement under this section so long as the Enterprise

(ii) An Enterprise that is the protection provider in a credit derivative must treat the credit derivative

as an exposure to the reference obligor and is not required to calculate a counterparty credit risk capital requirement for the credit derivative under this section, so long as it does so consistently for all such credit derivatives and either includes all or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(4)

Equity derivatives.

(5)

Exposure amount.

(ii) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty to the variation margin agreement is not required to post variation margin, is equal to the lesser of the exposure amount of the netting set calculated under paragraph (c)(5)(i) of this section and the exposure amount of the netting set calculated under paragraph (c)(5)(i) as if the netting set were not subject to a variation margin agreement.

(iii) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set that consists of only sold options in which the premiums have been fully paid by the counterparty to the options and where the options are not subject to a variation margin agreement is zero.

(iv) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set in which the counterparty is a commercial end-user is equal to the sum of replacement cost, as calculated under paragraph (c)(6) of this section, and the potential future exposure of the netting set, as calculated under paragraph (c)(7) of this section.

(v) For purposes of the exposure amount calculated under paragraph (c)(5)(i) of this section and all calculations that are part of that exposure amount, an Enterprise may elect to treat a derivative

contract that is a cleared transaction that is not subject to a variation margin agreement as one that is subject to a variation margin agreement, if the derivative contract is subject to a requirement that the counterparties make daily cash payments to each other to account for changes in the fair value of the derivative contract and to reduce the net position of the contract to zero. If an Enterprise makes an election under this paragraph (c)(5)(v) for one derivative contract, it must treat all other derivative contracts within the same netting set that are eligible for an election under this paragraph (c)(5)(v) as derivative contracts that are subject to a variation margin agreement.

(vi) For purposes of the exposure amount calculated under paragraph (c)(5)(i) of this section and all calculations that are part of that exposure amount, an Enterprise may elect to treat a credit derivative contract, equity derivative contract, or commodity derivative contract that references an index as if it were multiple derivative contracts each referencing one component of the index.

(6)

Replacement cost of a netting set

Netting set subject to a variation margin agreement under which the counterparty must post variation margin.

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts;

(B) The sum of the variation margin threshold and the minimum transfer amount applicable to the derivative contracts within the netting set less the net independent collateral amount applicable to such derivative contracts; or

(C) Zero.

(ii)

Netting sets not subject to a variation margin agreement under which the counterparty must post variation margin.

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts

within the netting set less the sum of the net independent collateral amount and variation margin amount applicable to such derivative contracts; or

(B) Zero.

(iii)

Multiple netting sets subject to a single variation margin agreement.

(iv)

Netting set subject to multiple variation margin agreements or a hybrid netting set.

(7)

Potential future exposure of a netting set.

(i)

PFE multiplier.

ER30NO23.030

Where:

(A) V is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

(B) C is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting set; and

(C) A is the aggregated amount of the netting set.

(ii)

Aggregated amount.

(iii)

Multiple netting sets subject to a single variation margin agreement.

(iv)

Netting set subject to multiple variation margin agreements or a hybrid netting set.

(8)

Hedging set amount

Interest rate derivative contracts.

(A) Formula 1 is as follows:

ER30NO23.031

(B) Formula 2 is as follows:

ER30NO23.032

Where in paragraphs (c)(8)(i)(A) and (B) of this section:

(

1

AddOn

TB

1

IR

(

2

AddOn

TB

2

IR

(

3

AddOn

TB

3

IR

(ii)

Exchange rate derivative contracts.

(iii)

Credit derivative contracts and equity derivative contracts.

ER30NO23.033

Where:

(A) k is each reference entity within the hedging set.

(B) K is the number of reference entities within the hedging set.

(C)

AddOn(Ref

k

(D)

k

2

(iv)

Commodity derivative contracts.

ER30NO23.034

Where:

(A) k is each commodity type within the hedging set.

(B) K is the number of commodity types within the hedging set.

(C)

AddOn (Type

k

)

(D)

P

2

(v)

Basis derivative contracts and volatility derivative contracts.

(9)

Adjusted derivative contract amount

Summary.

2

(ii)

Adjusted notional amount.

1

ER30NO23.035

Where:

(

i

(

ii

(

2

1

(

i

(

ii

(B)(

1

(

2

1

(C)(

1

(

2

1

(iii)

Supervisory delta adjustments.

(B)(

1

Table 1 to Paragraph (c)(9)(iii)(B)(

1

ER30NO23.036

(

2

1

(

i

E

(

ii

(

iii

(

iv

(

v

= max{L + 0.1%, 0}; and

(

vi

2

(C)(

1

ER30NO23.037

(

2

(

i

1

1

(

ii

(

iii

(iv)

Maturity factor.

1

ER30NO23.038

Where Margin Period of Risk (MPOR) refers to the period from the most recent exchange of collateral covering a netting set of derivative contracts with a defaulting counterparty until the derivative contracts are closed out and the resulting market risk is re-hedged.

(

2

1

(

i

(

ii

(

iii

(

3

1

2

1

2

(B) The maturity factor of a derivative contract that is not subject to a variation margin agreement, or derivative contracts under which the counterparty is not required to post variation margin, is determined by the following formula:

ER30NO23.039

Where M equals the greater of 10 business days and the remaining maturity of the contract, as measured in business days.

(C) For purposes of paragraph (c)(9)(iv) of this section, if an Enterprise has elected pursuant to paragraph (c)(5)(v) of this section to treat a derivative contract that is a cleared transaction that is not subject to a variation margin agreement as one that is subject to a variation margin agreement, the Enterprise must treat the derivative contract as subject to a variation margin agreement with maturity factor as determined according to (c)(9)(iv)(A) of this section, and daily settlement does not change the end date of the period referenced by the derivative contract.

(v)

Derivative contract as multiple effective derivative contracts.

(A) For an option where the counterparty pays a predetermined amount if the value of the underlying asset is above or below the strike price and nothing otherwise (binary option), the option must be treated as two separate options. For purposes of paragraph (c)(9)(iii)(B) of this section, a binary option with strike K must be represented as the combination of one bought European option and one sold European option of the same type as the original option (put or call) with the strikes set equal to 0.95 * K and 1.05 * K so that the payoff of the binary option is reproduced exactly outside the region between the two strikes. The absolute value of the sum of the adjusted derivative contract amounts of the bought and sold options is capped at the payoff amount of the binary option.

(B) For a derivative contract that can be represented as a combination of standard option payoffs (such as collar, butterfly spread, calendar spread, straddle, and strangle), an Enterprise must treat each standard option component as a separate derivative contract.

(C) For a derivative contract that includes multiple-payment options, (such as interest rate caps and floors), an Enterprise may represent each payment option as a combination of effective single-payment options (such as interest rate caplets and floorlets).

(D) An Enterprise may not decompose linear derivative contracts (such as swaps) into components.

(10)

Multiple netting sets subject to a single variation margin agreement

Calculating replacement cost.

Replacement Cost = max

NS

max

V

NS

;

max

C

MA

;

+

max

NS

min

V

NS

;

min

C

MA

;

Where:

(A) NS is each netting set subject to the variation margin agreement MA;

V

NS

(B) C

MA

(ii)

Calculating potential future exposure.

(11)

Netting set subject to multiple variation margin agreements or a hybrid netting set

Calculating replacement cost.

(ii)

Calculating potential future exposure.

(B) For purposes of paragraph (c)(11)(ii)(A) of this section, the netting set must be divided into sub-netting sets as follows:

(

1

(

2

Table 2 to Paragraph (

c

ii

2

Asset class

Category

Type

Supervisory

option

volatility

(percent)

Supervisory

correlation

factor

(percent)

Supervisory

factor

1

(percent)

Interest rate

N/A

N/A

50

N/A

0.50

Exchange rate

N/A

N/A

15

N/A

4.0

Credit, single name

Investment grade

N/A

100

50

0.46

Speculative grade

N/A

100

50

1.3

Sub-speculative grade

N/A

100

50

6.0

Credit, index

Investment Grade

N/A

80

80

0.38

Speculative Grade

N/A

80

80

1.06

Equity, single name

N/A

N/A

120

50

32

Equity, index

N/A

N/A

75

80

20

Commodity

Energy

Electricity

150

40

40

Other

70

40

18

Metals

N/A

70

40

18

Agricultural

N/A

70

40

18

Other

N/A

70

40

18

1

(d)

Credit valuation adjustment (CVA) risk-weighted assets

In general.

(2) [Reserved]

(3)

Recognition of hedges.

ind

(ii) An Enterprise shall not recognize as a CVA hedge any tranched or n

th

(4)

Total CVA risk-weighted assets.

CVA

(5)

Simple CVA approach.

CVA

ER30NO23.040

Where:

A

i

w

i

2

M

i

EAD

i

total

M

i

hedge

B

i

2

(A) w

i

(B) M

i

(C)

EAD

i

total

EAD

i

total

i

i

(D)

M

i

hedge

(E) B

i

M

i

hedge

M

i

hedge

(F) M

ind

ind

ind

(G) B

ind

ind

ind

ind

ind

ind

(ii) The Enterprise may treat the notional amount of the index attributable to a counterparty as a single name hedge of counterparty i (B

i

CVA

i

ind

ind

i

Table 3 to Paragraph (

d

ii

Internal PD

(in percent)

Weight

w

i

(in percent)

0.00-0.07

0.70

>0.070-0.15

0.80

>0.15-0.40

1.00

>0.40-2.00

2.00

>2.00-6.00

3.00

>6.00

10.00

§ 1240.37

Cleared transactions.

(a)

General requirements

Clearing member clients.

(2)

Clearing members.

(b)

Clearing member client Enterprise

Risk-weighted assets for cleared transactions.

(ii) A clearing member client Enterprise's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all its cleared transactions.

(2)

Trade exposure amount.

(A) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the methodology used to calculate exposure amount for OTC derivative contracts under § 1240.36; plus

(B) The fair value of the collateral posted by the clearing member client Enterprise and held by the CCP, clearing member, or custodian in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, the trade exposure amount equals:

(A) The exposure amount for the repo-style transaction calculated using the methodologies under § 1240.39(c); plus

(B) The fair value of the collateral posted by the clearing member client Enterprise and held by the CCP, clearing member, or custodian in a manner that is not bankruptcy remote.

(3)

Cleared transaction risk weights.

(A) 2 percent if the collateral posted by the Enterprise to the QCCP or clearing member is subject to an arrangement that prevents any losses to the clearing member client Enterprise due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client Enterprise has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge

(including one resulting from an event of default or from liquidation, insolvency, or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions; or

(B) 4 percent if the requirements of § 1240.37(b)(3)(i)(A) are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Enterprise must apply the risk weight appropriate for the CCP according to this subpart D.

(4)

Collateral.

(ii) A clearing member client Enterprise must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

(c)

Clearing member Enterprises

Risk-weighted assets for cleared transactions.

(ii) A clearing member Enterprise's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2)

Trade exposure amount.

(i) For a cleared transaction that is either a derivative contract or a netting set of derivative contracts, the trade exposure amount equals:

(A) The exposure amount for the derivative contract, calculated using the methodology to calculate exposure amount for OTC derivative contracts under § 1240.36; plus

(B) The fair value of the collateral posted by the clearing member Enterprise and held by the CCP in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals:

(A) The exposure amount for repo-style transactions calculated using methodologies under § 1240.39(c); plus

(B) The fair value of the collateral posted by the clearing member Enterprise and held by the CCP in a manner that is not bankruptcy remote.

(3)

Cleared transaction risk weight.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Enterprise must apply the risk weight appropriate for the CCP according to this subpart D.

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member Enterprise may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a CCP where the clearing member Enterprise is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 1240.3(a), and the clearing member Enterprise is not obligated to reimburse the clearing member client in the event of the CCP default.

(4)

Collateral.

(ii) A clearing member Enterprise must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

(d)

Default fund contributions

General requirement.

(2)

Risk-weighted asset amount for default fund contributions to non-qualifying CCPs.

(3)

Risk-weighted asset amount for default fund contributions to QCCPs.

CM

(i)

Method 1.

CCP

ER17DE20.030

Where:

(A) EBRM

i

(

1

(

2

(

3

(B) VM

i

(C) IM

i

(D) DF

i

(E) RW = 20 percent, except when FHFA has determined that a higher risk weight is more appropriate based on the specific characteristics of the QCCP and its clearing members; and

(F) Where a QCCP has provided its K

CCP

CCP

(ii) For an Enterprise that is a clearing member of a QCCP with a default fund supported by funded

commitments, K

CM

ER17DE20.031

Subscripts 1 and 2 denote the clearing members with the two largest A

Net

Net

Net

(B) N = the number of clearing members in the QCCP;

(C) DF

CCP

(D) DF

CM

(E) DF = DF

CCP

CM

(F)

DF

I

DF

I

(G)

DF

CM

DF

CM

DF

I

i

DF

i

DF

I

(H)

DF

DF

CCP

DF

CM

DF

DF

I

ER17DE20.032

(that is, a decreasing capital factor, between 1.6 percent and 0.16 percent, applied to the excess funded default funds provided by clearing members);

(J)

c

2

(K) μ = 1.2;

(iii)(A) For an Enterprise that is a clearing member of a QCCP with a default fund supported by unfunded commitments, K

CM

ER17DE20.033

Where:

(

1

i

(

2

CM

(

3

CM

(B) For an Enterprise that is a clearing member of a QCCP with a default fund supported by unfunded commitments and is unable to calculate K

CM

CM

ER17DE20.034

Where:

(

1

i

(

2

CM

(

3

CM

(iv)

Method 2.

DF

RWA

DF

Where:

(A) TE = the Enterprise's trade exposure amount to the QCCP, calculated according to paragraph (c)(2) of this section;

(B) DF = the funded portion of the Enterprise's default fund contribution to the QCCP.

(

4

Total risk-weighted assets for default fund contributions.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022]

§ 1240.37, Nt.

Effective Date Note:

At 88 FR 83481, Nov. 30, 2023, § 1240.37 was revised, effective Jan. 1, 2026. For the convenience of the user, the revised text is set forth as follows:

§ 1240.37

Cleared transactions.

(a)

General requirements

Clearing member clients.

(2)

Clearing members.

(b)

Clearing member client Enterprises

Risk-weighted assets for cleared transactions.

(ii) A clearing member client Enterprise's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2)

Trade exposure amount.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD for the repo-style transaction calculated using the methodology set forth in § 1240.39(b)(2) or (3), plus the fair value of the collateral posted by the clearing member client Enterprise and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

(3)

Cleared transaction risk weights.

(A) 2 percent if the collateral posted by the Enterprise to the QCCP or clearing member is subject to an arrangement that prevents any loss to the clearing member client Enterprise due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client Enterprise has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency, or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.

(B) 4 percent, if the requirements of paragraph (b)(3)(i)(A) of this section are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Enterprise must apply the risk weight applicable to the CCP under this subpart D.

(4)

Collateral.

(ii) A clearing member client Enterprise must calculate a risk-weighted asset amount for any

collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D, as applicable.

(c)

Clearing member Enterprise

Risk-weighted assets for cleared transactions.

(ii) A clearing member Enterprise's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2)

Trade exposure amount.

(i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD calculated using the methodology used to calculate EAD for derivative contracts set forth in § 1240.36(c), plus the fair

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD calculated under § 1240.39(b)(2) or (3), plus the fair value of the collateral posted by the clearing member Enterprise and held by the CCP in a manner that is not bankruptcy remote.

(3)

Cleared transaction risk weights.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Enterprise must apply the risk weight applicable to the CCP according to this subpart D.

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member Enterprise may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a QCCP where the clearing member Enterprise is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 1240.3(a), and the clearing member Enterprise is not obligated to reimburse the clearing member client in the event of the QCCP default.

(4)

Collateral.

(ii) A clearing member Enterprise must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

(d)

Default fund contributions

General requirement.

(2)

Risk-weighted asset amount for default fund contributions to nonqualifying CCPs.

(3)

Risk-weighted asset amount for default fund contributions to QCCPs.

CM

(4)

Capital requirement for default fund contributions to a QCCP.

CM

ER30NO23.041

Where:

(i)

K

CCP

(ii)

DF

pref

(iii)

DF

CCP

pari passu

(iv)

DF

CCPCM

pref

(5)

Hypothetical capital requirement of a QCCP.

CCP

CCP

CCP

ER30NO23.042

Where:

(i) CM

i

(ii) EAD

i

(6)

EAD of a QCCP to a clearing member.

(ii) With respect to any derivative contracts between the QCCP and the clearing member that are cleared transactions and any guarantees that the clearing member has provided to the QCCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the exposure amount of the QCCP to the clearing member for all such derivative contracts and guarantees of derivative contracts calculated under SA-CCR in § 1240.36(c) (or, with respect to a QCCP located outside the United States, under a substantially identical methodology in effect in the jurisdiction) using a value of 10 business days for purposes of § 1240.36(c)(9)(iv); less the value of

all collateral held by the QCCP posted by the clearing member or a client of the clearing member in connection with a derivative contract for which the clearing member has provided a guarantee to the QCCP and the amount of the prefunded default fund contribution of the clearing member to the QCCP.

(iii) With respect to any repo-style transactions between the QCCP and a clearing member that are cleared transactions, EAD is equal to:

EAD

i

i

i

i

Where:

(A) EBRM

i

(B) IM

i

(C) DF

i

(D) QCCP that is not already deducted in paragraph (d)(6)(ii) of this section.

(iv) EAD must be calculated separately for each clearing member's sub-client accounts and sub-house account (

i.e.,

(v) If any account or sub-account contains both derivative contracts and repo-style transactions, the EAD of that account is the sum of the EAD for the derivative contracts within the account and the EAD of the repo-style transactions within the account. If independent collateral is held for an account containing both derivative contracts and repo-style transactions, then such collateral must

be allocated to the derivative contracts and repo-style transactions in proportion to the respective product specific exposure amounts, calculated, excluding the effects of collateral, according to § 1240.39(b) for repo-style transactions and to § 1240.36(c)(5) for derivative contracts.

§ 1240.38

Guarantees and credit derivatives: substitution treatment.

(a)

Scope

General.

(2)

Applicability.

(i) Credit risk is fully covered by an eligible guarantee or eligible credit derivative; or

(ii) Credit risk is covered on a pro rata basis (that is, on a basis in which the Enterprise and the protection provider share losses proportionately) by an eligible guarantee or eligible credit derivative.

(3)

Tranching.

(4)

Multiple guarantees or credit derivatives.

(5)

Single guarantees or credit derivatives.

(b)

Rules of recognition.

(2) An Enterprise may only recognize the credit risk mitigation benefits of an eligible credit derivative to hedge an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event if:

(i) The reference exposure ranks

pari passu

(ii) The reference exposure and the hedged exposure are to the same legal entity, and legally enforceable cross-default or cross-acceleration clauses are in place to ensure payments under the credit derivative are triggered when the obligated party of the hedged exposure fails to pay under the terms of the hedged exposure.

(c)

Substitution approach

Full coverage.

(2)

Partial coverage.

(i) The Enterprise may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The Enterprise must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraph (d), (e), or (f) of this section.

(d)

Maturity mismatch adjustment.

(2) A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).

(3) The residual maturity of a hedged exposure is the longest possible remaining time before the obligated party of the hedged exposure is scheduled to fulfil its obligation on the hedged exposure. If

a credit risk mitigant has embedded options that may reduce its term, the Enterprise (protection purchaser) must use the shortest possible residual maturity for the credit risk mitigant. If a call is at the discretion of the protection provider, the residual maturity of the credit risk mitigant is at the first call date. If the call is at the discretion of the Enterprise (protection purchaser), but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the Enterprise to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant.

(4) A credit risk mitigant with a maturity mismatch may be recognized only if its original maturity is greater than or equal to one year and its residual maturity is greater than three months.

(5) When a maturity mismatch exists, the Enterprise must apply the following adjustment to reduce the effective notional amount of the credit risk mitigant: Pm = E × (t0.25)/(T0.25), where:

(i) Pm = effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(ii) E = effective notional amount of the credit risk mitigant;

(iii) t = the lesser of T or the residual maturity of the credit risk mitigant, expressed in years; and

(iv) T = the lesser of five or the residual maturity of the hedged exposure, expressed in years.

(e)

Adjustment for credit derivatives without restructuring as a credit event.

(1) Pr = effective notional amount of the credit risk mitigant, adjusted for lack of restructuring event (and maturity mismatch, if applicable); and

(2) Pm = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch, if applicable).

(f)

Currency mismatch adjustment.

FX

(i) Pc = effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);

(ii) Pr = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

(iii) H

FX

(2) An Enterprise must set H

FX

(3) An Enterprise must adjust H

FX

ER17DE20.035

where T

M

§ 1240.39

Collateralized transactions.

(a)

General.

(i) The simple approach in paragraph (b) of this section for any exposure; or

(ii) The collateral haircut approach in paragraph (c) of this section for repo-style transactions, eligible margin loans, collateralized derivative contracts, and single-product netting sets of such transactions.

(2) An Enterprise may use any approach described in this section that is valid for a particular type of exposure or transaction; however, it must use the same approach for similar exposures or transactions.

(b)

The simple approach

General requirements.

(ii) To qualify for the simple approach, the financial collateral must meet the following requirements:

(A) The collateral must be subject to a collateral agreement for at least the life of the exposure;

(B) The collateral must be revalued at least every six months; and

(C) The collateral (other than gold) and the exposure must be denominated in the same currency.

(2)

Risk weight substitution.

(ii) An Enterprise must apply a risk weight to the unsecured portion of the exposure based on the risk weight applicable to the exposure under this subpart.

(3)

Exceptions to the 20 percent risk-weight floor and other requirements.

(i) An Enterprise may assign a zero percent risk weight to an exposure to an OTC derivative contract that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by cash on deposit.

(ii) An Enterprise may assign a 10 percent risk weight to an exposure to an OTC derivative contract that is marked-to-market daily and subject to a daily margin maintenance requirement, to the extent that the contract is collateralized by an exposure to a sovereign that qualifies for a zero percent risk weight under § 1240.32.

(iii) An Enterprise may assign a zero percent risk weight to the collateralized portion of an exposure where:

(A) The financial collateral is cash on deposit; or

(B) The financial collateral is an exposure to a sovereign that qualifies for a zero percent risk weight under § 1240.32, and the Enterprise has discounted the fair value of the collateral by 20 percent.

(c)

Collateral haircut approach

General.

(2)

Exposure amount equation.

(i)(A) For eligible margin loans and repo-style transactions and netting sets thereof, E equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set)); and

(B) For collateralized derivative contracts and netting sets thereof, E equals the exposure amount of the OTC derivative contract (or netting set) calculated under § 1240.36(b)(1) or (2).

(ii) C equals the value of the collateral (the sum of the current fair values of all instruments, gold and cash the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction (or netting set));

(iii) Es equals the absolute value of the net position in a given instrument or in gold (where the net position in the instrument or gold equals the sum of the current fair values of the instrument or gold the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of that same instrument or gold the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty);

(iv) Hs equals the market price volatility haircut appropriate to the instrument or gold referenced in Es;

(v) Efx equals the absolute value of the net position of instruments and cash in a currency that is different from the settlement currency (where the net position in a given currency equals the sum of the current fair values of any instruments or cash in the currency the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of any instruments or cash in the currency the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty); and

(vi) Hfx equals the haircut appropriate to the mismatch between the currency referenced in Efx and the settlement currency.

(3)

Standard supervisory haircuts.

ER17DE20.037

(ii) For currency mismatches, an Enterprise must use a haircut for foreign exchange rate volatility (Hfx) of 8.0 percent, as adjusted in certain circumstances under paragraphs (c)(3)(iii) and (iv) of this section.

(iii) For repo-style transactions and client-facing derivative transactions, an Enterprise may multiply the standard supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section by the square root of

1/2

(iv) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must adjust the supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section upward on the basis of a holding period of twenty business days for the following quarter except in the calculation of the exposure amount for purposes of § 1240.37. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, an Enterprise must adjust the supervisory haircuts upward on the basis of a holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the Enterprise must adjust the supervisory haircuts upward for that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set. An Enterprise must adjust the standard supervisory haircuts upward using the following formula:

ER17DE20.038

where

(A) T

M

(B) H

S

(C) T

S

(v) If the instrument an Enterprise has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the Enterprise must use a 25.0 percent haircut for market price volatility (Hs).

(4)

Own internal estimates for haircuts.

(i) To use its own internal estimates, an Enterprise must satisfy the following minimum standards:

(A) An Enterprise must use a 99th percentile one-tailed confidence interval.

(B) The minimum holding period for a repo-style transaction and client-facing derivative transaction is five business days and for an eligible margin loan and a derivative contract other than a client-facing derivative transaction is ten business days except for transactions or netting sets for which

N

M

ER17DE20.039

where

(

1

M

(

2

N

N

(

3

N

N

(C) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must calculate the haircut using a minimum holding period of twenty business days for the following quarter except in the calculation of the exposure amount for purposes of § 1240.37. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, an Enterprise must calculate the haircut using a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the Enterprise must calculate the haircut for transactions in that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(D) An Enterprise is required to calculate its own internal estimates with inputs calibrated to historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the security or category of securities.

(E) An Enterprise must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the Enterprise's own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. The Enterprise must provide prior written notice to FHFA if the Enterprise makes any material changes to these policies and procedures.

(F) Nothing in this section prevents FHFA from requiring an Enterprise to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

(G) An Enterprise must update its data sets and calculate haircuts no less frequently than quarterly and must also reassess data sets and haircuts whenever market prices change materially.

(ii) With respect to debt securities that are investment grade, an Enterprise may calculate haircuts for categories of securities. For a category of securities, the Enterprise must calculate the haircut on the basis of internal volatility estimates for securities in that category that are representative of the securities in that category that the Enterprise has lent, sold subject to repurchase, posted as

collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the Enterprise must at a minimum take into account:

(A) The type of issuer of the security;

(B) The credit quality of the security;

(C) The maturity of the security; and

(D) The interest rate sensitivity of the security.

(iii) With respect to debt securities that are not investment grade and equity securities, an Enterprise must calculate a separate haircut for each individual security.

(iv) Where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency, the Enterprise must calculate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities of foreign exchange rates between the mismatched currency and the settlement currency.

(v) An Enterprise's own estimates of market price and foreign exchange rate volatilities may not take into account the correlations among securities and foreign exchange rates on either the

§ 1240.39, Nt.

Effective Date Note:

At 88 FR 83481, Nov. 30, 2023, § 1240.39 was revised, effective Jan. 1, 2026. For the convenience of the user, the revised text is set forth as follows:

§ 1240.39

Collateralized transactions.

(a)

General.

(i) The collateral haircut approach set forth in paragraph (b)(2) of this section; and

(ii) For single product netting sets of repo-style transactions and eligible margin loans, the simple VaR methodology set forth in paragraph (b)(3) of this section.

(2) An Enterprise may use any combination of the two methodologies for collateral recognition;

however, it must use the same methodology for similar exposures or transactions.

(b)

EAD for eligible margin loans and repo-style transactions

General.

(i) The collateral haircut approach described in paragraph (b)(2) of this section; or

(ii) For netting sets only, the simple VaR methodology described in paragraph (b)(3) of this section.

(2)

Collateral haircut approach

EAD equation.

max{0, [(EC) + (E

s

s

fx

fx

Where:

(A) E equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set));

(B) C equals the value of the collateral (the sum of the current fair values of all instruments, gold, and cash the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction (or netting set));

(C) E

s

(D) H

s

s

(E) E

fx

(F) H

fx

(ii)

Standard supervisory haircuts.

(A) An Enterprise must use the haircuts for market price volatility (H

s

Table 1 to Paragraph (

b

ii

1

Residual maturity

Haircut (in percent) assigned based on:

Sovereign issuers risk weight under § 1240.32

2

(in percent)

Zero

20 or 50

100

Non-sovereign issuers risk weight under § 1240.32

(in percent)

20

50

100

Investment grade securitization

exposures

(in percent)

Less than or equal to 1 year

0.5

1.0

15.0

1.0

2.0

4.0

4.0

Greater than 1 year and less than or equal to 5 years

2.0

3.0

15.0

4.0

6.0

8.0

12.0

Greater than 5 years

4.0

6.0

15.0

8.0

12.0

16.0

24.0

Main index equities (including convertible bonds) and gold

15.0

Other publicly traded equities (including convertible bonds)

25.0

Mutual funds

Highest haircut applicable to any security in which the fund can invest.

Cash collateral held

Zero.

Other exposure types

25.0

1

2

(B) For currency mismatches, an Enterprise must use a haircut for foreign exchange rate volatility (H

fx

(C) For repo-style transactions and client-facing derivative transactions, an Enterprise may multiply the supervisory haircuts provided in paragraphs (b)(2)(ii)(A) and (B) of this section by the square root of

1/2

(D) An Enterprise must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days (for eligible margin loans) or five business days (for repo-style transactions), using the formula provided in paragraph (b)(2)(ii)(F) of this section where the conditions in this paragraph (b)(2)(ii)(D) apply. If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must adjust the supervisory haircuts upward on the basis of a minimum holding period of twenty business days for the following quarter (except when an Enterprise is calculating EAD for a cleared transaction under § 1240.37). If a netting set contains one or more trades involving illiquid collateral, an Enterprise must adjust the supervisory haircuts

upward on the basis of a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted longer than the holding period, then the Enterprise must adjust the supervisory haircuts upward for that netting set on the basis of a minimum holding period that is at least two times the minimum holding period for that netting set.

(E)(

1

1

(

2

1

1

(F) An Enterprise must adjust the standard supervisory haircuts upward, pursuant to the adjustments provided in paragraphs (b)(2)(ii)(C) through (E) of this section, using the following formula:

ER30NO23.043

Where:

(

1

M

s

(

2

s

(G) If the instrument an Enterprise has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the Enterprise must use a 25.0 percent haircut for

market price volatility (H

s

(iii)

Own internal estimates for haircuts.

s

fx

(A) To use its own internal estimates, an Enterprise must satisfy the following minimum quantitative standards:

(

1

(

2

3

N

M

ER30NO23.044

Where:

(

i

M

(

ii

N

N

(

iii

N

N

(

3

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4

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5

(

6

(

7

(B) With respect to debt securities that are investment grade, an Enterprise may calculate haircuts for categories of securities. For a category of securities, the Enterprise must calculate the haircut on the basis of internal volatility estimates for securities in that category that are representative of the securities in that category that the Enterprise has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the Enterprise must at a minimum take into account:

(

1

(

2

(

3

(

4

(C) With respect to debt securities that are not investment grade and equity securities, an Enterprise must calculate a separate haircut for each individual security.

(D) Where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency, the Enterprise must calculate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities of foreign exchange rates between the mismatched currency and the settlement currency.

(E) An Enterprise's own estimates of market price and foreign exchange rate volatilities may not take into account the correlations among securities and foreign exchange rates on either the exposure or collateral side of a transaction (or netting set) or the correlations among securities and foreign exchange rates between the exposure and collateral sides of the transaction (or netting set).

(3)

Simple VaR methodology.

(i) E equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty under the netting set);

(ii) C equals the value of the collateral (the sum of the current fair values of all instruments, gold, and cash the Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the netting set); and

(iii) PFE (potential future exposure) equals the Enterprise's empirically based best estimate of the 99th percentile, one-tailed confidence interval for an increase in the value of (EC) over a five-business-day holding period for repo-style transactions, or over a ten-business-day holding period for eligible margin loans except for netting sets for which paragraph (b)(3)(iv) of this section applies using a minimum one-year historical observation period of price data representing the instruments that the Enterprise has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. The Enterprise must validate its VaR model by establishing and maintaining a rigorous and regular backtesting regime.

(iv) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must use a twenty-business-day holding period for the following quarter (except when an Enterprise is calculating EAD for a cleared transaction under § 1240.37). If a netting set contains one or more trades involving illiquid collateral, an Enterprise must use a twenty-business-day holding period. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the Enterprise must set its PFE for that netting set equal to an estimate over a holding period that is at least two times the minimum holding period for that netting set.

Risk-Weighted Assets for Unsettled Transactions

§ 1240.40

Unsettled transactions.

(a)

Definitions.

(1) Delivery-versus-payment (DvP) transaction means a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment.

(2) Payment-versus-payment (PvP) transaction means a foreign exchange transaction in which each counterparty is obligated to make a final transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies.

(3) A transaction has a normal settlement period if the contractual settlement period for the transaction is equal to or less than the market standard for the instrument underlying the transaction and equal to or less than five business days.

(4) Positive current exposure of an Enterprise for a transaction is the difference between the transaction value

(b)

Scope.

(1) Cleared transactions that are marked-to-market daily and subject to daily receipt and payment of variation margin;

(2) Repo-style transactions, including unsettled repo-style transactions;

(3) One-way cash payments on OTC derivative contracts; or

(4) Transactions with a contractual settlement period that is longer than the normal settlement period (which are treated as OTC derivative contracts as provided in § 1240.36).

(c)

System-wide failures.

(d)

Delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions.

ER17DE20.040

(e)

Non-DvP/non-PvP (non-delivery-versus-payment/non-payment-versus-payment) transactions.

(2) From the business day after the Enterprise has made its delivery until five business days after the counterparty delivery is due, the Enterprise must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the Enterprise as an exposure to the counterparty and using the applicable

(3) If the Enterprise has not received its deliverables by the fifth business day after counterparty delivery was due, the Enterprise must assign a 1,250 percent risk weight to the current fair value of the deliverables owed to the Enterprise.

(f)

Total risk-weighted assets for unsettled transactions.

Risk-Weighted Assets for CRT and Other Securitization Exposures

§ 1240.41

Operational requirements for CRT and other securitization exposures.

(a)

Operational criteria for traditional securitizations.

(1) The exposures are not reported on the Enterprise's consolidated balance sheet under GAAP;

(2) The Enterprise has transferred to one or more third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls; and

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

(b)

Operational criteria for synthetic securitizations.

(1) The credit risk mitigant is:

(i) Financial collateral;

(ii) A guarantee that meets all criteria as set forth in the definition of eligible guarantee in § 1240.2, except for the criteria in paragraph (3) of that definition; or

(iii) A credit derivative that meets all criteria as set forth in the definition of eligible credit derivative in § 1240.2, except for the criteria in paragraph (3) of the definition of eligible guarantee in § 1240.2.

(2) The Enterprise transfers credit risk associated with the underlying exposures to one or more third parties, and the terms and conditions in the credit risk mitigants employed do not include provisions that:

(i) Allow for the termination of the credit protection due to deterioration in the credit quality of the underlying exposures;

(ii) Require the Enterprise to alter or replace the underlying exposures to improve the credit quality of the underlying exposures;

(iii) Increase the Enterprise's cost of credit protection in response to deterioration in the credit quality

of the underlying exposures;

(iv) Increase the yield payable to parties other than the Enterprise in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the Enterprise after the inception of the securitization;

(3) The Enterprise obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions; and

(4) Any clean-up calls relating to the securitization are eligible clean-up calls.

(c)

Operational criteria for credit risk transfers.

(1) The credit risk transfer is any of the following

(i) An eligible funded synthetic risk transfer;

(ii) An eligible reinsurance risk transfer;

(iii) An eligible single-family lender risk share;

(iv) An eligible multifamily lender risk share; or

(v) An eligible senior-subordinated structure.

(2) The credit risk transfer has been approved by FHFA as effective in transferring the credit risk of one or more mortgage exposures to another party, taking into account any counterparty, recourse, or other risk to the Enterprise and any capital, liquidity, or other requirements applicable to counterparties;

(3) The Enterprise transfers credit risk associated with the underlying exposures to one or more third parties, and the terms and conditions in the credit risk transfer employed do not include provisions that:

(i) Allow for the termination of the credit risk transfer due to deterioration in the credit quality of the underlying exposures;

(ii) Require the Enterprise to alter or replace the underlying exposures to improve the credit quality

of the underlying exposures;

(iii) Increase the Enterprise's cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(iv) Increase the yield payable to parties other than the Enterprise in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the Enterprise after the inception of the credit risk transfer;

(4) The Enterprise obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk transfer in all relevant jurisdictions;

(5) Any clean-up calls relating to the credit risk transfer are eligible clean-up calls; and

(6) The Enterprise includes in its periodic disclosures under the Federal securities laws, or in other appropriate public disclosures, a reasonably detailed description of

(i) The material recourse or other risks that might reduce the effectiveness of the credit risk transfer in transferring the credit risk on the underlying exposures to third parties; and

(ii) Each condition under paragraph (a) of this section (governing traditional securitizations) or paragraph (b) of this section (governing synthetic securitizations) that is not satisfied by the credit risk transfer and the reasons that each such condition is not satisfied.

(d)

Due diligence requirements for securitization exposures.

(2) An Enterprise must demonstrate its comprehensive understanding of a securitization exposure under paragraph (d)(1) of this section, for each securitization exposure by:

(i) Conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure, and documenting such analysis within three business days after acquiring the exposure, considering:

(A) Structural features of the securitization that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit

enhancements, liquidity enhancements, fair value triggers, the performance of organizations that service the exposure, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spread, most recent sales price and historic price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For resecuritization exposures, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures; and

(ii) On an on-going basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under paragraph (d)(1) of this section for each securitization exposure.

Effective Date Note:

At 88 FR 83481, Nov. 30, 2023, § 1240.41 was amended by revising paragraph (c)(5), redesignating paragraph (c)(6) as paragraph (c)(7), and adding new paragraph (c)(6), effective Apr. 1, 2024. For the convenience of the user, the added and revised text is set forth as follows:

§ 1240.41

Operational requirements for CRT and other securitization exposures.

(c) * * *

(5) Any clean-up calls relating to the credit risk transfer are eligible clean-up calls;

(6) Any time-based calls relating to the credit risk transfer are eligible time-based calls; and

§ 1240.42

Risk-weighted assets for CRT and other securitization exposures.

(a)

Securitization risk weight approaches.

(1) An Enterprise must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from a securitization and apply a 1,250 percent risk weight to the portion of a CEIO that does not constitute after-tax gain-on-sale.

(2) If a securitization exposure does not require deduction under paragraph (a)(1) of this section, an Enterprise may assign a risk weight to the securitization exposure either using the simplified supervisory formula approach (SSFA) in accordance with § 1240.43(a) through (d) for a securitization exposure that is not a retained CRT exposure or an acquired CRT exposure or using the credit risk transfer approach (CRTA) in accordance with § 1240.44 for a retained CRT exposure, and in either case, subject to the limitation under paragraph (e) of this section.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and the Enterprise cannot, or chooses not to apply the SSFA or the CRTA to the exposure, the Enterprise must assign a risk weight to the exposure as described in § 1240.45.

(4) If a securitization exposure is a derivative contract (other than protection provided by an Enterprise in the form of a credit derivative) that has a

(b)

Total risk-weighted assets for securitization exposures.

(c)

Exposure amount of a CRT or other securitization exposure

On-balance sheet securitization exposures.

(2)

Off-balance sheet securitization exposures.

(3)

Repo-style transactions, eligible margin loans, and derivative contracts.

(d)

Overlapping exposures.

(e)

Implicit support.

(1) The Enterprise must include in risk-weighted assets all of the underlying exposures associated with the securitization as if the exposures had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization; and

(2) The Enterprise must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The risk-based capital impact to the Enterprise of providing such implicit support.

(f)

Interest-only mortgage-backed securities.

(g)

Nth-to-default credit derivatives

Protection provider.

(2) A

ttachment and detachment points.

(i) The attachment point (parameter

A

(ii) The detachment point (parameter

D

A

(3)

Risk weights.

(4)

Protection purchaser

First-to-default credit derivatives.

(ii)

Second-or-subsequent-to-default credit derivatives.

(

1

(

2

(B) If an Enterprise satisfies the requirements of paragraph (i)(4)(ii)(A) of this section, the Enterprise must determine its risk-based capital requirement for the underlying exposures as if the Enterprise had only synthetically securitized the underlying exposure with the nth smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures.

(C) An Enterprise must calculate a risk-based capital requirement for counterparty credit risk according to § 1240.36 for a nth-to-default credit derivative that does not meet the rules of recognition of § 1240.38(b).

(h)

Guarantees and credit derivatives other than nth-to-default credit derivatives

Protection provider.

(2)

Protection purchaser.

(ii) If an Enterprise cannot, or chooses not to, recognize a purchased credit derivative as a credit risk mitigant under § 1240.46, the Enterprise must determine the exposure amount of the credit derivative under § 1240.36.

(A) If the Enterprise purchases credit protection from a counterparty that is not a securitization SPE, the Enterprise must determine the risk weight for the exposure according to this subpart D.

(B) If the Enterprise purchases the credit protection from a counterparty that is a securitization SPE, the Enterprise must determine the risk weight for the exposure according to § 1240.42,

Effective Date Note:

At 88 FR 83481, Nov. 30, 2023, § 1240.42 was amended by revising paragraph (f), effective Apr. 1, 2024 For the convenience of the user, the revised text is set forth as follows:

§ 1240.42

Risk-weighted assets for CRT and other securitization exposures.

(f)

Interest-only mortgage-backed securities.

§ 1240.43

Simplified supervisory formula approach (SSFA).

(a)

General requirements for the SSFA.

(b)

SSFA parameters.

(1)

K

G

K

G

K

G

(2) Parameter

W

W

(i) Ninety days or more past due;

(ii) Subject to a bankruptcy or insolvency proceeding;

(iii) In the process of foreclosure;

(iv) Held as real estate owned;

(v) Has contractually deferred payments for 90 days or more, other than principal or interest payments deferred on:

(A) Federally-guaranteed student loans, in accordance with the terms of those guarantee programs; or

(B) Consumer loans, including non-federally-guaranteed student loans, provided that such payments are deferred pursuant to provisions included in the contract at the time funds are disbursed that provide for period(s) of deferral that are not initiated based on changes in the creditworthiness of the borrower; or

(vi) Is in default.

(3) Parameter

A

A

A

A

(4) Parameter

D

D

A

pari passu

D

(5) A supervisory calibration parameter,

p,

p

(c) Mechanics of the SSFA.

K

G

W

K

A

K

G

K

A

A

D,

K

A

(1) When the detachment point, parameter

D,

K

A

(2) When the attachment point, parameter

A,

K

A

(3) When

A

K

A

D

K

A

K

SSFA

(i) The weight assigned to 1,250 percent equals

ER17DE20.041

(ii) The weight assigned to 1,250 percent times

K

SSFA

ER17DE20.042

(iii) The risk weight will be set equal to:

ER17DE20.043

(d)

SSFA equation.

ER17DE20.044

e

(2) Then the Enterprise must calculate

K

SSFA

ER17DE20.045

(3) The risk weight for the exposure (expressed as a percent) is equal to

K

SSFA

(e)

Limitations.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022]

§ 1240.44

Credit risk transfer approach (CRTA).

(a)

General requirements for the CRTA.

(b)

CRTA parameters.

(1) Parameter

A

A

A

A

(2) Parameter

AggUPB

$

(3) Parameter

CM

%

CM

%

(4) Parameter

Collat

%

RIF

Collat

%

RIF

(5) Parameter

D

D

A

pari passu

D

(6) Parameter

EL

$

EL

$

EL

$

EL

$

(7) Parameter

HC

(i) For a CRT with respect to single-family mortgage exposures, the counterparty haircut is set forth in table 12 to paragraph (e)(3)(ii) in § 1240.33, determined as if the counterparty to the CRT were a counterparty to loan-level credit enhancement (as defined in § 1240.33(a)) and considering the counterparty rating and mortgage concentration risk of the counterparty to the CRT and the single-family segment and product of the underlying single-family mortgage exposures.

(ii) For a CRT with respect to multifamily mortgage exposures, the counterparty haircut is set forth in table 1 to this paragraph (b)(7)(ii), with counterparty rating and mortgage concentration risk having the meaning given in § 1240.33(a).

ER17DE20.046

(8) Parameter

LS

%

LS

%

(9) Parameter

LTF

%

LTF

%

(i) An Enterprise must have the following information to calculate

LTF

%

(A) The remaining months to the contractual maturity of the CRT (

CRT

RMM

(B) The UPB-weighted-average remaining months to maturity of the underlying multifamily mortgage exposures that have remaining months to maturity greater than

CRT

RMM

MME

RMM

CRT

RMM

MME

RMM

CRT

RMM

(C) The sum of UPB on the underlying multifamily mortgage exposures that have remaining loan terms less than or equal to

CRT

RMM

LTF

%

LTFUPB

%

(D) An Enterprise must use the following method to calculate

LTF

%

ER17DE20.047

(ii) An Enterprise must have the following information to calculate

LTF

%

(A) The original closing date (or effective date) of the CRT and the maturity date on the CRT.

(B) UPB share of single-family mortgage exposures that have original amortization terms of less than or equal to 189 months (

CRTF15

%

(C) UPB share of single-family mortgage exposures that have original amortization terms greater than 189 months and OLTVs of less than or equal to 80 percent(

CRT80NotF15

%

(D) The duration of seasoning.

(E) An Enterprise must use the following method to calculate LTF

%

CRTMthstoMaturity

(

1

CRTMthstoMaturity

(

i

(

ii

(

2

CRTMthstoMaturity

(

i

CRTMthstoMaturity

2

iii

CRTMthstoMaturity

ER16MR22.001

(

ii

CRTMthstoMaturity

2

iii

CRTMthstoMaturity

CRTMthstoMaturity.

(

iii

LTF

%

,

ER17DE20.049

where:

CRTLT

M

CRTLT

S

CRTMthstoMaturity

CRTMthstoMaturity

CRTLT

CRTLT

Not

CRTLTGT

Not

ER17DE20.050

(10) Parameter

RWA

$

(11) Parameter

CntptyRWA

$

CntptyRWA

$

(i) Parameter

RWA

$

(ii) Aggregate credit risk-weighted assets associated with the underlying mortgage exposures where the counterparty haircuts for loan-level credit enhancements are set to zero.

(c)

Mechanics of the CRTA.

RW

%

(1) When the detachment point, parameter

D,

K

A

AggEL

%

(2) When the attachment point, parameter

A,

K

A

AggEL

%

(3) When parameter

A

K

A

AggEL

%

D

K

A

AggEL

%,

(i) 1,250 percent multiplied by the ratio of (A) the sum of

K

A

AggEL

%

A

D

A

(ii) 5 percent multiplied by the ratio of (A) parameter

D

K

A

AggEL

%

D

A.

(d)

CRTA equations.

ER16MR22.002

If the contractual terms of the CRT do not provide for the transfer of the counterparty credit risk associated with any loan-level credit enhancement or other loss sharing on the underlying mortgage exposures, then the Enterprise shall calculate

K

A

ER17DE20.053

Otherwise the Enterprise shall calculate

K

A

ER17DE20.054

(e)

Limitations.

(f)

Adjusted exposure amount (AEA)

In general.

ER17DE20.055

(2)

Inputs

Enterprise adjusted exposure.

ER16MR22.003

Where the loss timing effectiveness adjustments (LTEA) for a retained CRT exposure are determined under paragraph (g) of this section, and the loss sharing effectiveness adjustment (LSEA) for a retained CRT exposure is determined under paragraph (h) of this section.

(ii)

Expected loss share.

ER17DE20.056

(iii)

Risk weight.

(g)

Loss timing effectiveness adjustments.

i

SLS

%,Tranche

ELS

%,Tranche

then

LTEA

%

,Tranche,CM

ER16MR22.004

LTEA

%

,Tranche,LS

ER17DE20.058

Otherwise LTEA

%

,Tranche,CM

and LTEA

%

,Tranche,LS

where K

A

A

LTK

A,CM

K

A

AggEL

%

LTF

%

,CM

AggEL

%

LTK

A,LS

K

A

AggEL

%

LTF

%

,LS

AggEL

%

and

LTF

%

,CM

%

LTF

%

,LS

%

ER17DE20.059

(h)

Loss sharing effectiveness adjustment.

if

RW

%

,Tranche

ELS

%

,Tranche

then

ER16MR22.005

Otherwise

LSEA

%

,Tranche

where

UnCollatUL

%

,Tranche

max

SLS

%

,Tranche

max

Collat

%

RIF,Tranche

ELS

%

,Tranche

SRIF

%

,Tranche

max

SLS

%

,Tranche

Collat

%

RIF,Tranche

and the share of the tranche that is covered by expected loss (ELS) and the share of the tranche that is covered by stress loss (SLS) are as follows:

ER17DE20.061

(i) [Reserved]

(j)

RWA supplement for retained loan-level counterparty credit risk.

RWASup

$

RWASup

$,

Tranche

CntptyRWA

$

D

A

Otherwise the Enterprise shall add an

RWASup

$,

Tranche

(k)

Retained CRT Exposure.

RWA

$,

Tranche

AEA

$,

Tranche

RW

%

,Tranche

RWASup

$,

Tranche

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022]

§ 1240.45

Securitization exposures to which the SSFA and the CRTA do not apply.

An Enterprise must assign a 1,250 percent risk weight to any acquired CRT exposure and all securitization exposures to which the Enterprise does not apply the SSFA under § 1240.43 or the CRTA under § 1240.44.

§ 1240.46

Recognition of credit risk mitigants for securitization exposures.

(a)

General.

(2) An investing Enterprise that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant under § 1240.38 or § 1240.39, but only as provided in this section.

(b)

Mismatches.

Risk-Weighted Assets for Equity Exposures

§ 1240.51

Introduction and exposure measurement.

(a)

General.

(2) An Enterprise must treat an investment in a separate account (as defined in § 1240.2) as if it were an equity exposure to an investment fund.

(b)

Adjusted carrying value.

(1) For the on-balance sheet component of an equity exposure, the Enterprise's carrying value of the exposure;

(2) [Reserved]

(3) For the off-balance sheet component of an equity exposure that is not an equity commitment, the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) given a small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure as calculated in paragraph (b)(1) of this section; and

(4) For a commitment to acquire an equity exposure (an equity commitment), the effective notional principal amount of the exposure is multiplied by the following conversion factors (CFs):

(i) Conditional equity commitments with an original maturity of one year or less receive a CF of 20 percent.

(ii) Conditional equity commitments with an original maturity of over one year receive a CF of 50 percent.

(iii) Unconditional equity commitments receive a CF of 100 percent.

§ 1240.52

Simple risk-weight approach (SRWA).

(a)

General.

(b)

SRWA computation for individual equity exposures.

(1)

Community development equity exposures.

(2)

Other equity exposures.

§ § 1240.53-1240.60

[Reserved]

§ 1240.61

Purpose and scope.

Sections 1240.61 through 1240.63 of this subpart establish public disclosure requirements related to the capital requirements and buffers described in subpart B and subpart G.

[87 FR 33429, June 2, 2022]

§ 1240.62

Disclosure requirements.

(a) An Enterprise must provide timely public disclosures each calendar quarter of the information in the applicable tables in § 1240.63, where for the purpose of these disclosure requirements timely means no later than 10 business days after an Enterprise files its corresponding Annual Report on SEC Form 10-K at the end of a fiscal year or its corresponding Quarterly Report on SEC Form 10-Q at the end of other calendar quarters. If a material change occurs, where for the purpose of these disclosure requirements a material change means a change such that the omission or misstatement of which could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions, then an Enterprise must disclose a brief discussion of this change and its likely impact as soon as practicable thereafter, and no later than the end of the next calendar quarter. Qualitative disclosures that have not changed from the prior quarter may be omitted from the next quarterly disclosure but must be disclosed at least annually after the end of the fourth calendar quarter.

(b) Unless otherwise directed by FHFA, the Enterprise's management may provide all of the disclosures required by §§ 1240.61 through 1240.63 in one place on the Enterprise's public website or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the Enterprise publicly provides a summary table specifically indicating the location(s)

of all such disclosures.

(c) An Enterprise must have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures.

(d) The Enterprise's board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over the disclosures required by this subpart, and must ensure that appropriate review of the disclosures takes place. The Chief Risk Officer and the Chief Financial Officer of the Enterprise must attest that the disclosures meet the requirements of this subpart.

(e) If an Enterprise believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public certain information that is either proprietary or confidential in nature, the Enterprise is not required to disclose these specific items but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

[87 FR 33429, June 2, 2022]

§ 1240.63

Disclosures.

(a) Except as provided in § 1240.62, an Enterprise must make the disclosures described in Tables 1 through 11 of this section publicly available for each of the last three years (that is, twelve quarters) or such shorter period until an Enterprise has made twelve quarterly disclosures pursuant to this part beginning with the disclosure for the quarter ending December 31, 2022.

(b) An Enterprise must publicly disclose each quarter the following:

(1) Regulatory capital ratios for common equity tier 1 capital, additional tier 1 capital, tier 1 capital, tier 2 capital, total capital, core capital, and adjusted total capital, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios;

(2) Total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets; and

(3) A reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements.

Table 1 to Paragraph (

b

Qualitative disclosures

(a) Summary information on the terms and conditions of the main features of all regulatory capital instruments.

Quantitative disclosures

(b) The amount of common equity tier 1 capital, with separate disclosure of:

(1) Common stock and related surplus;

(2) Retained earnings;

(3) AOCI (net of tax) and other reserves; and

(4) Regulatory adjustments and deductions made to common equity tier 1 capital.

(c) The amount of core capital, with separate disclosure of:

(1) The par or stated value of outstanding common stock;

(2) The par or stated value of outstanding perpetual, noncumulative preferred stock;

(3) Paid-in capital; and

(4) Retained earnings.

(d) The amount of tier 1 capital, with separate disclosure of:

(1) Additional tier 1 capital elements, including additional tier 1 capital instruments and tier 1 minority interest not included in common equity tier 1 capital; and

(2) Regulatory adjustments and deductions made to tier 1 capital.

(e) The amount of total capital, with separate disclosure of:

(1) The general allowance for foreclosure losses; and

(2) Other amounts from sources of funds available to absorb losses incurred by the Enterprise that the Director by regulation determines are appropriate to include in determining total capital.

(f) The amount of adjusted total capital, with separate disclosure of:

(1) Tier 2 capital elements, including tier 2 capital instruments; and

(2) Regulatory adjustments and deductions made to adjusted total capital.

Table 2 to Paragraph (

b

Qualitative disclosures

(a) A summary discussion of the Enterprise's approach to assessing the adequacy of its capital to support current and future activities.

Quantitative disclosures

(b) Risk-weighted assets for:

(1) Exposures to sovereign entities;

(2) Exposures to certain supranational entities and MDBs;

(3) Exposures to GSEs;

(4) Exposures to depository institutions and credit unions;

(5) Exposures to PSEs;

(6) Corporate exposures;

(7) Aggregate single-family mortgage exposures categorized by:

(i) Performing loans;

(ii) Non-modified re-performing loans;

(iii) Modified re-performing loans;

(iv) Non-performing loans;

(8) Aggregate multifamily mortgage exposures categorized by:

(i) Multifamily fixed-rate exposures;

(ii) Multifamily adjustable-rate exposures;

(9) Past due loans;

(10) Other assets;

(11) Insurance assets;

(12) Off-balance sheet exposures;

(13) Cleared transactions;

(14) Default fund contributions;

(15) Unsettled transactions;

(16) CRT and other securitization exposures; and

(17) Equity exposures.

(c) Standardized market risk-weighted assets as calculated under subpart F of this part.

(d) Risk-weighted assets for operational risk.

(e) Common equity tier 1, tier 1, and adjusted total risk-based capital ratios.

(f) Total standardized risk-weighted assets.

Table 3 to Paragraph (

b

Qualitative disclosures

(a) A summary discussion of the Enterprise's capital buffers.

Quantitative disclosures

(b) At least quarterly, the Enterprise must calculate and publicly disclose the prescribed capital conservation buffer amount and all its components as described under § 1240.11.

(c) At least quarterly, the Enterprise must calculate and publicly disclose the prescribed leverage buffer amount as described under § 1240.11.

(d) At least quarterly, the Enterprise must calculate and publicly disclose the eligible retained income of the Enterprise, as described under § 1240.11.

(e) At least quarterly, the Enterprise must calculate and publicly disclose any limitations it has on distributions and discretionary bonus payments resulting from the capital buffer framework described

under § 1240.11, including the maximum payout amount for the quarter.

(c) For each separate risk area described in Tables 4 through 9, the Enterprise must, as a general qualitative disclosure requirement, describe its risk management objectives and policies, including: Strategies and processes; the structure and organization of the relevant risk management function; the scope and nature of risk reporting and/or measurement systems; policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges and/or mitigants.

Table 4 to Paragraph (

c

1

Qualitative disclosures

(a) The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 5 of this section), including the:

(1) Policy for determining past due or delinquency status;

(2) Policy for placing loans on nonaccrual;

(3) Policy for returning loans to accrual status;

(4) Description of the methodology that the Enterprise uses to estimate its adjusted allowance for credit losses, including statistical methods used where applicable;

(5) Policy for charging-off uncollectible amounts; and

(6) Discussion of the Enterprise's credit risk management policy.

Quantitative disclosures

(b) Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP, without taking into account the effects of credit risk mitigation techniques (for example, collateral and netting not permitted under GAAP), over the period categorized by major types of credit exposure. For example, the Enterprises could use categories similar to that used for financial statement purposes. Such categories might include, for instance:

(1) Loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures;

(2) Debt securities; and

(3) OTC derivatives.

(c) Geographic distribution of exposures, categorized in significant areas by major types of credit exposure.

2

(d) Industry or counterparty type distribution of exposures, categorized by major types of credit exposure.

(e) By major industry or counterparty type:

(1) Amount of loans not past due or past due less than 30 days;

(2) Amount of loans past due 30 days but less than 90 days;

(3) Amount of loans past due 90 days and on nonaccrual;

(4) Amount of loans past due 90 days and still accruing;

3

(5) The balance in the adjusted allowance for credit losses at the end of each period, disaggregated on the basis of loans not past due or past due less than 30 days, loans past due 30 days but less than 90 days, loans past due 90 days and on nonaccrual, and loans past due 90 days and still accruing; and

(6) Charge-offs during the period.

(f) Amount of past due loans categorized by significant geographic areas including, if practical, the amounts of allowances related to each geographical area,

4

(g) Reconciliation of changes in the adjusted allowance for credit losses.

5

(h) Remaining contractual maturity delineation (for example, one year or less) of the whole portfolio, categorized by credit exposure.

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2

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4

5

Table 5 to Paragraph (

c

Qualitative disclosures

(a) The general qualitative disclosure requirement with respect to OTC derivatives, eligible margin loans, and repo-style transactions, including a discussion of:

(1) The methodology used to assign credit limits for counterparty credit exposures;

(2) Policies for securing collateral, valuing and managing collateral, and establishing credit reserves;

(3) The primary types of collateral taken; and

(4) The impact of the amount of collateral the Enterprise would have to provide given a deterioration in the Enterprise's own creditworthiness.

Quantitative Disclosures

(b) Gross positive fair value of contracts, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure.

1

2

(c) Notional amount of purchased and sold credit derivatives, segregated between use for the Enterprise's own credit portfolio and in its intermediation activities, including the distribution of the credit derivative products used, categorized further by protection bought and sold within each product group.

1

2

Table 6 to Paragraph (

c

1

2

Qualitative disclosures

(a) The general qualitative disclosure requirement with respect to credit risk mitigation, including:

(1) Policies and processes for collateral valuation and management;

(2) A description of the main types of collateral taken by the Enterprise;

(3) The main types of guarantors/credit derivative counterparties and their creditworthiness; and

(4) Information about (market or credit) risk concentrations with respect to credit risk mitigation.

Quantitative Disclosures

(b) For each separately disclosed credit risk portfolio, the total exposure that is covered by eligible financial collateral, and after the application of haircuts.

(c) For each separately disclosed portfolio, the total exposure that is covered by guarantees/credit derivatives and the risk-weighted asset amount associated with that exposure.

1

2

Table 7 to Paragraph (

c

Qualitative disclosures

(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of:

(1) The Enterprise's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the Enterprise to other entities and including the type of risks assumed and retained with resecuritization activity;

1

(2) The nature of the risks (

e.g.,

(3) The roles played by the Enterprise in the securitization process

2

(4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures;

(5) The Enterprise's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and

(6) The risk-based capital approaches that the Enterprise follows for its securitization exposures including the type of securitization exposure to which each approach applies.

(b) A list of:

(1) The type of securitization SPEs that the Enterprise, as sponsor, uses to securitize third-party exposures. The Enterprise must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and

(2) Affiliated entities:

(i) That the Enterprise manages or advises; and

(ii) That invest either in the securitization exposures that the Enterprise has securitized or in securitization SPEs that the Enterprise sponsors.

3

(c) Summary of the Enterprise's accounting policies for CRT and securitization activities, including:

(1) Whether the transactions are treated as sales (

i.e.,

(2) Recognition of gain-on-sale;

(3) Methods and key assumptions applied in valuing retained or purchased interests;

(4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes;

(5) Treatment of synthetic securitizations;

(6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and

(7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the Enterprise to provide financial support for securitized assets.

(d) An explanation of significant changes to any quantitative information since the last reporting period.

Quantitative Disclosures

(e) The total outstanding exposures securitized by the Enterprise in securitizations that meet the operational criteria provided in § 1240.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the Enterprise acts only as sponsor.

4

(f) For exposures securitized by the Enterprise in securitizations that meet the operational criteria in § 1240.41:

(1) Amount of securitized assets that are past due categorized by exposure type; and

(2) Losses recognized by the Enterprise during the current period categorized by exposure type.

5

(g) The total amount of outstanding exposures intended to be securitized categorized by exposure type.

(h) Aggregate amount of:

(1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and

(2) Off-balance sheet securitization exposures categorized by exposure type.

(i)(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization

exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (

e.g.,

(2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any:

(i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and

(ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.

(j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.

(k) Aggregate amount of resecuritization exposures retained or purchased categorized according to:

(1) Exposures to which credit risk mitigation is applied and those not applied; and

(2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

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2

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4

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Table 8 to Paragraph (

c

Qualitative Disclosures

(a) The general qualitative disclosure requirement with respect to equity risk for equities, including:

(1) Differentiation between holdings on which capital gains are expected and those taken under other objectives including for relationship and strategic reasons; and

(2) Discussion of important policies covering the valuation of and accounting for equity holdings. This includes the accounting techniques and valuation methodologies used, including key

assumptions and practices affecting valuation as well as significant changes in these practices.

Quantitative Disclosures

(b) Carrying value disclosed on the balance sheet of investments, as well as the fair value of those investments; for securities that are publicly traded, a comparison to publicly-quoted share values where the share price is materially different from fair value.

(c) The types and nature of investments, including the amount that is:

(1) Publicly traded; and

(2) Non publicly traded.

(d) The cumulative realized gains (losses) arising from sales and liquidations in the reporting period.

(e)(1) Total unrealized gains (losses) recognized on the balance sheet but not through earnings.

(2) Total unrealized gains (losses) not recognized either on the balance sheet or through earnings.

(3) Any amounts of the above included in tier 1 or tier 2 capital.

(f) Capital requirements categorized by appropriate equity groupings, consistent with the Enterprise's methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding regulatory capital requirements.

1

1

Table 9 to Paragraph (

c

Qualitative disclosures

(a) The general qualitative disclosure requirement, including the nature of interest rate risk for non-trading activities and key assumptions, including assumptions regarding loan prepayments and frequency of measurement of interest rate risk for non-trading activities.

Quantitative disclosures

(b) The increase (decline) in earnings or economic value (or relevant measure used by management) for upward and downward rate shocks according to management's method for

measuring interest rate risk for non-trading activities, categorized by currency (as appropriate).

Table 10 to Paragraph (

c

Qualitative disclosures

(a) The general qualitative disclosure requirement for operational risk.

(b) Description of the AMA, when applicable, including a discussion of relevant internal and external factors considered in the Enterprise's measurement approach.

(c) A description of the use of insurance for the purpose of mitigating operational risk.

Table 11 to Paragraph (

c

Dollar amounts in thousands

Tril

Bil

Mil

Thou

Part 1: Summary comparison of accounting assets and adjusted total assets

1 Total consolidated assets as reported in published financial statements

2 Adjustment for fiduciary assets recognized on balance sheet but excluded from total leverage exposure

3 Adjustment for derivative exposures

4 Adjustment for repo-style transactions

5 Adjustment for off-balance sheet exposures (that is, conversion to credit equivalent amounts of off-balance sheet exposures)

6 Other adjustments

7 Adjusted total assets (sum of lines 1 to 6)

Part 2: Tier 1 leverage ratio

On-balance sheet exposures

1 On-balance sheet assets (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions)

2 LESS: Amounts deducted from tier 1 capital

3 Total on-balance sheet exposures (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions) (sum of lines 1 and 2)

Derivative exposures

4 Current exposure for derivative exposures (that is, net of cash variation margin)

5 Add-on amounts for potential future exposure (PFE) for derivative exposures

6 Gross-up for cash collateral posted if deducted from the on-balance sheet assets, except for cash variation margin

7 LESS: Deductions of receivable assets for cash variation margin posted in derivative transactions, if included in on-balance sheet assets

8 LESS: Exempted CCP leg of client-cleared transactions

9 Effective notional principal amount of sold credit protection

10 LESS: Effective notional principal amount offsets and PFE adjustments for sold credit protection

11 Total derivative exposures (sum of lines 4 to 10)

Repo-style transactions

12 On-balance sheet assets for repo-style transactions, except include the gross value of receivables for reverse repurchase transactions. Exclude from this item the value of securities received in a security-for-security repo-style transaction where the securities lender has not sold or re-hypothecated the securities received. Include in this item the value of securities that qualified for sales treatment that must be reversed

13 LESS: Reduction of the gross value of receivables in reverse repurchase transactions by cash payables in repurchase transactions under netting agreements

14 Counterparty credit risk for all repo-style transactions

15 Exposure for repo-style transactions where a banking organization acts as an agent

16 Total exposures for repo-style transactions (sum of lines 12 to 15)

Other off-balance sheet exposures

17 Off-balance sheet exposures at gross notional amounts

18 LESS: Adjustments for conversion to credit equivalent amounts

19 Off-balance sheet exposures (sum of lines 17 and 18)

Capital and adjusted total assets

20 Tier 1 capital

21 Adjusted total assets (sum of lines 3, 11, 16, and 19)

Tier 1 leverage ratio

22 Tier 1 leverage ratio

(in percent)

[87 FR 33429, June 2, 2022, as amended at 87 FR 37979, June 27, 2022]

Subpart ERisk-Weighted AssetsInternal Ratings-Based and Advanced Measurement Approaches

§ 1240.100

Purpose, applicability, and principle of conservatism.

(a)

Purpose.

(1) Minimum requirements for using Enterprise-specific internal risk measurement and management processes for calculating risk-based capital requirements; and

(2) Methodologies for the Enterprises to calculate their advanced approaches total risk-weighted assets.

(b)

Applicability.

(2) An Enterprise must also include in its calculation of advanced credit risk-weighted assets under

this subpart all covered positions, as defined in subpart F of this part.

(c)

Principle of conservatism.

(1) The Enterprise can demonstrate on an ongoing basis to the satisfaction of FHFA that not applying the provision would, in all circumstances, unambiguously generate a risk-based capital requirement for each such exposure greater than that which would otherwise be required under this subpart;

(2) The Enterprise appropriately manages the risk of each such exposure;

(3) The Enterprise notifies FHFA in writing prior to applying this principle to each such exposure; and

(4) The exposures to which the Enterprise applies this principle are not, in the aggregate, material to the Enterprise.

§ 1240.101

Definitions.

(a) Terms that are set forth in § 1240.2 and used in this subpart have the definitions assigned thereto in § 1240.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Advanced internal ratings-based (IRB) systems

Advanced systems

Backtesting

Benchmarking

Business environment and internal control factors

Dependence

Economic downturn conditions

Eligible operational risk offsets

(i) Are generated by internal business practices to absorb highly predictable and reasonably stable operational losses, including reserves calculated consistent with GAAP; and

(ii) Are available to cover expected operational losses with a high degree of certainty over a one-year horizon.

Expected operational loss (EOL)

External operational loss event data

Internal operational loss event data

Operational loss

Operational loss event

(i) Internal fraud, which means the operational loss event type category that comprises operational losses resulting from an act involving at least one internal party of a type intended to defraud, misappropriate property, or circumvent regulations, the law, or company policy excluding diversity- and discrimination-type events.

(ii) External fraud, which means the operational loss event type category that comprises operational losses resulting from an act by a third party of a type intended to defraud, misappropriate property, or circumvent the law. All third-party-initiated credit losses are to be treated as credit risk losses.

(iii) Employment practices and workplace safety, which means the operational loss event type category that comprises operational losses resulting

(iv) Clients, products, and business practices, which means the operational loss event type category that comprises operational losses resulting from the nature or design of a product or from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements).

(v) Damage to physical assets, which means the operational loss event type category that comprises operational losses resulting from the loss of or damage to physical assets from natural disaster or other events.

(vi) Business disruption and system failures, which means the operational loss event type category that comprises operational losses resulting from disruption of business or system failures.

(vii) Execution, delivery, and process management, which means the operational loss event type

category that comprises operational losses resulting from failed transaction processing or process management or losses arising from relations with trade counterparties and vendors.

Operational risk

Operational risk exposure

Risk parameter

Scenario analysis

Unexpected operational loss (UOL)

Unit of measure

§ 1240.121

Minimum requirements.

(a)

Process and systems requirements.

(2) The systems and processes used by an Enterprise for risk-based capital purposes under this subpart must be consistent with the Enterprise's internal risk management processes and management information reporting systems.

(3) Each Enterprise must have an appropriate infrastructure with risk measurement and management processes that meet the requirements of this section and are appropriate given the Enterprise's size and level of complexity. The Enterprise must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of long run experience with respect to its credit risk and operational risk exposures.

(b)

Risk rating and segmentation systems for exposures.

(2) If an Enterprise uses multiple rating or segmentation systems, the Enterprise's rationale for assigning an exposure to a particular system must be documented and applied in a manner that best reflects the obligor or exposure's level of risk. An Enterprise must not inappropriately allocate exposures across systems to minimize regulatory capital requirements.

(3) In assigning ratings to exposures, an Enterprise must use all relevant and material information and ensure that the information is current.

(c)

Quantification of risk parameters for exposures.

(2) An Enterprise's estimates of risk parameters must incorporate all relevant, material, and available data that is reflective of the Enterprise's actual exposures and of sufficient quality to support the determination of risk-based capital requirements for the exposures. In particular, the population of exposures in the data used for estimation purposes, the underwriting standards in use when the data were generated, and other relevant characteristics, should closely match or be comparable to the Enterprise's exposures and standards. In addition, an Enterprise must:

(i) Demonstrate that its estimates are representative of long run experience, including periods of economic downturn conditions, whether internal or external data are used;

(ii) Take into account any changes in underwriting practice or the process for pursuing recoveries over the observation period;

(iii) Promptly reflect technical advances, new data, and other information as they become available;

(iv) Demonstrate that the data used to estimate risk parameters support the accuracy and robustness of those estimates; and

(v) Demonstrate that its estimation technique performs well in out-of-sample tests whenever possible.

(3) The Enterprise's risk parameter quantification process must produce appropriately conservative risk parameter estimates where the Enterprise has limited relevant data, and any adjustments that are part of the quantification process must not result in a pattern of bias toward lower risk parameter estimates.

(4) The Enterprise's risk parameter estimation process should not rely on the possibility of U.S. government financial assistance.

(5) Default, loss severity, and exposure amount data must include periods of economic downturn

conditions, or the Enterprise must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

(6) If an Enterprise uses internal data obtained prior to becoming subject to this subpart or external data to arrive at risk parameter estimates, the Enterprise must demonstrate to FHFA that the Enterprise has made appropriate adjustments if necessary to be consistent with the Enterprise's definition of default. Internal data obtained after the Enterprise becomes subject to this subpart must be consistent with the Enterprise's definition of default.

(7) The Enterprise must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(8) The Enterprise must, at least annually, conduct a comprehensive review and analysis of reference data to determine relevance of the reference data to the Enterprise's exposures, quality of reference data to support risk parameter estimates, and consistency of reference data to the Enterprise's definition of default.

(d)

Operational risk

Operational risk management processes.

(i) Have an operational risk management function that:

(A) Is independent of business line management; and

(B) Is responsible for designing, implementing, and overseeing the Enterprise's operational risk data and assessment systems, operational risk quantification systems, and related processes;

(ii) Have and document a process (which must capture business environment and internal control factors affecting the Enterprise's operational risk profile) to identify, measure, monitor, and control operational risk in the Enterprise's products, activities, processes, and systems; and

(iii) Report operational risk exposures, operational loss events, and other relevant operational risk information to business unit management, senior management, and the board of directors (or a designated committee of the board).

(2)

Operational risk data and assessment systems.

(i) Be structured in a manner consistent with the Enterprise's current business activities, risk profile, technological processes, and risk management processes; and

(ii) Include credible, transparent, systematic, and verifiable processes that incorporate the following elements on an ongoing basis:

(A)

Internal operational loss event data.

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(B)

External operational loss event data.

(C)

Scenario analysis.

(D)

Business environment and internal control factors.

(3)

Operational risk quantification systems.

(i) Must generate estimates of the Enterprise's operational risk exposure using its operational risk data and assessment systems;

(ii) Must employ a unit of measure that is appropriate for the Enterprise's range of business activities and the variety of operational loss events to which it is exposed, and that does not combine

business activities or operational loss events with demonstrably different risk profiles within the same loss distribution;

(iii) Must include a credible, transparent, systematic, and verifiable approach for weighting each of the four elements, described in paragraph (d)(2)(ii) of this section, that an Enterprise is required to incorporate into its operational risk data and assessment systems;

(iv) May use internal estimates of dependence among operational losses across and within units of measure if

(v) Must be reviewed and updated (as appropriate) whenever the Enterprise becomes aware of information that may have a material effect on the Enterprise's estimate of operational risk exposure, but the review and update must occur no less frequently than annually.

(e)

Data management and maintenance.

(2) An Enterprise must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

(3) An Enterprise must retain sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of its advanced systems.

(f)

Control, oversight, and validation mechanisms.

(2) The Enterprise's board of directors (or a designated committee of the board) must at least annually review the effectiveness of, and approve, the Enterprise's advanced systems.

(3) An Enterprise must have an effective system of controls and oversight that:

(i) Ensures ongoing compliance with the minimum requirements in this section;

(ii) Maintains the integrity, reliability, and accuracy of the Enterprise's advanced systems; and

(iii) Includes adequate governance and project management processes.

(4) The Enterprise must validate, on an ongoing basis, its advanced systems. The Enterprise's validation process must be independent of the advanced systems' development, implementation,

and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the advanced systems;

(ii) An ongoing monitoring process that includes verification of processes and benchmarking; and

(iii) An outcomes analysis process that includes backtesting.

(5) The Enterprise must have an internal audit function or equivalent function that is independent of business-line management that at least annually:

(i) Reviews the Enterprise's advanced systems and associated operations, including the operations of its credit function and estimations of risk parameters;

(ii) Assesses the effectiveness of the controls supporting the Enterprise's advanced systems; and

(iii) Documents and reports its findings to the Enterprise's board of directors (or a committee thereof).

(6) The Enterprise must periodically stress test its advanced systems. The stress testing must include a consideration of how economic cycles, especially downturns, affect risk-based capital requirements (including migration across rating grades and segments and the credit risk mitigation benefits of double default treatment).

(g)

Documentation.

§ 1240.122

Ongoing qualification.

(a)

Changes to advanced systems.

(b)

Failure to comply with qualification requirements.

(2) The Enterprise must establish and submit a plan satisfactory to FHFA to return to compliance

with the qualification requirements.

(3) In addition, if FHFA determines that the Enterprise's advanced approaches total risk-weighted assets are not commensurate with the Enterprise's credit, market, operational, or other risks, FHFA may require such an Enterprise to calculate its advanced approaches total risk-weighted assets with any modifications provided by FHFA.

§ 1240.123

Advanced approaches credit risk-weighted asset calculations.

(a) An Enterprise must use its advanced systems to determine its credit risk capital requirements for each of the following exposures:

(1) General credit risk (including for mortgage exposures);

(2) Cleared transactions;

(3) Default fund contributions;

(4) Unsettled transactions;

(5) Securitization exposures;

(6) Equity exposures; and

(7) The fair value adjustment to reflect counterparty credit risk in valuation of OTC derivative contracts.

(b) The credit-risk-weighted assets calculated under this subpart E equals the aggregate credit risk capital requirement under paragraph (a) of this section multiplied by 12.5.

§ § 1240.1241240.160

[Reserved]

§ 1240.161

Qualification requirements for incorporation of operational risk mitigants.

(a)

Qualification to use operational risk mitigants.

(1) The Enterprise's operational risk quantification system is able to generate an estimate of the

Enterprise's operational risk exposure (which does not incorporate qualifying operational risk mitigants) and an estimate of the Enterprise's operational risk exposure adjusted to incorporate qualifying operational risk mitigants; and

(2) The Enterprise's methodology for incorporating the effects of insurance, if the Enterprise uses insurance as an operational risk mitigant, captures through appropriate discounts to the amount of risk mitigation:

(i) The residual term of the policy, where less than one year;

(ii) The cancelation terms of the policy, where less than one year;

(iii) The policy's timeliness of payment;

(iv) The uncertainty of payment by the provider of the policy; and

(v) Mismatches in coverage between the policy and the hedged operational loss event.

(b)

Qualifying operational risk mitigants.

(1) Insurance that:

(i) Is provided by an unaffiliated company that the Enterprise deems to have strong capacity to meet its claims payment obligations and the Enterprise assigns the company a probability of default equal to or less than 10 basis points;

(ii) Has an initial term of at least one year and a residual term of more than 90 days;

(iii) Has a minimum notice period for cancellation by the provider of 90 days;

(iv) Has no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed depository institution; and

(v) Is explicitly mapped to a potential operational loss event;

(2) In evaluating an operational risk mitigant other than insurance, FHFA will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding total capital.

§ 1240.162

Mechanics of operational risk risk-weighted asset calculation.

(a) If an Enterprise does not qualify to use or does not have qualifying operational risk mitigants, the Enterprise's dollar risk-based capital requirement for operational risk is its operational risk exposure minus eligible operational risk offsets (if any).

(b) If an Enterprise qualifies to use operational risk mitigants and has qualifying operational risk mitigants, the Enterprise's dollar risk-based capital requirement for operational risk is the greater of:

(1) The Enterprise's operational risk exposure adjusted for qualifying operational risk mitigants minus eligible operational risk offsets (if any); or

(2) 0.8 multiplied by the difference between:

(i) The Enterprise's operational risk exposure; and

(ii) Eligible operational risk offsets (if any).

(c) The Enterprise's risk-weighted asset amount for operational risk equals the greater of:

(1) The Enterprise's dollar risk-based capital requirement for operational risk determined under paragraphs (a) or (b) multiplied by 12.5; and

(2) The Enterprise's adjusted total assets multiplied by 0.0015 multiplied by 12.5.

(d) After January 1, 2022, and until the compliance date for this section under § 1240.4, the Enterprise's risk weighted amount for operational risk will equal the Enterprise's adjusted total assets multiplied by 0.0015 multiplied by 12.5.

Subpart FRisk-weighted AssetsMarket Risk

§ 1240.201

Purpose, applicability, and reservation of authority.

(a)

Purpose.

(b)

Applicability.

(c)

Reservation of authority.

(1) FHFA may require an Enterprise to hold an amount of capital greater than otherwise required under this subpart if FHFA determines that the Enterprise's capital requirement for spread risk as calculated under this subpart is not commensurate with the spread risk of the Enterprise's covered positions.

(2) If FHFA determines that the risk-based capital requirement calculated under this subpart by the Enterprise for one or more covered positions or portfolios of covered positions is not commensurate with the risks associated with those positions or portfolios, FHFA may require the Enterprise to assign a different risk-based capital requirement to the positions or portfolios that more accurately reflects the risk of the positions or portfolios.

(3) In addition to calculating risk-based capital requirements for specific positions or portfolios under this subpart, the Enterprise must also calculate risk-based capital requirements for covered positions under subpart D or subpart E of this part, as appropriate.

(4) Nothing in this subpart limits the authority of FHFA under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law.

§ 1240.202

Definitions.

(a) Terms set forth in § 1240.2 and used in this subpart have the definitions assigned in § 1240.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Backtesting

Covered position

de minimis

(i) Any NPL, RPL, reverse mortgage loan, or other mortgage exposure that, in any case, does not secure an MBS guaranteed by the Enterprise;

(ii) Any MBS guaranteed by an Enterprise, MBS guaranteed by Ginnie Mae, reverse mortgage

security, PLS, commercial MBS, CRT exposure, or other securitization exposure, regardless of whether the position is held by the Enterprise for the purpose of short-term resale or with the intent of benefiting from actual or expected short-

(iii) Any other trading asset or trading liability (whether on- or off-balance sheet).

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Market risk

Private label security (PLS)

Reverse mortgage

Reverse mortgage security

Spread risk

§ 1240.203

Requirements for managing market risk.

(a)

Management of covered positions

Active management.

(i) Marking covered positions to market or to model on a daily basis;

(ii) Daily assessment of the Enterprise's ability to hedge position and portfolio risks, and of the extent of market liquidity;

(iii) Establishment and daily monitoring of limits on covered positions by a risk control unit independent of the business unit;

(iv) Routine monitoring by senior management of information described in paragraphs (a)(1)(i) through (iii) of this section;

(v) At least annual reassessment of established limits on positions by senior management; and

(vi) At least annual assessments by qualified personnel of the quality of market inputs to the valuation process, the soundness of key assumptions, the reliability of parameter estimation in

pricing models, and the stability and accuracy of model calibration under alternative market scenarios.

(2)

Valuation of covered positions.

(b)

Requirements for internal models.

(2) An Enterprise must meet all of the requirements of this section on an ongoing basis. The Enterprise must promptly notify FHFA when:

(i) The Enterprise plans to extend the use of a model to an additional business line or product type;

(ii) The Enterprise makes any change to an internal model that would result in a material change in the Enterprise's risk-weighted asset amount for a portfolio of covered positions; or

(iii) The Enterprise makes any material change to its modeling assumptions.

(3) FHFA may determine an appropriate capital requirement for the covered positions to which a model would apply, if FHFA determines that the model no longer complies with this subpart or fails to reflect accurately the risks of the Enterprise's covered positions.

(4) The Enterprise must periodically, but no less frequently than annually, review its internal models in light of developments in financial markets and modeling technologies, and enhance those models as appropriate to ensure

(5) The Enterprise must incorporate its internal models into its risk management process and integrate the internal models used for calculating its market risk measure into its daily risk management process.

(6) The level of sophistication of an Enterprise's internal models must be commensurate with the complexity and amount of its covered positions. An Enterprise's internal models may use any of the generally accepted approaches, including variance-covariance models, historical simulations, or Monte Carlo simulations, to measure market risk.

(7) The Enterprise's internal models must properly measure all the material risks in the covered

positions to which they are applied.

(8) The Enterprise's internal models must conservatively assess the risks arising from less liquid positions and positions with limited price transparency under realistic market scenarios.

(9) The Enterprise must have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal models to ensure continued applicability and relevance.

(c)

Control, oversight, and validation mechanisms.

(2) The Enterprise must validate its internal models initially and on an ongoing basis. The Enterprise's validation process must be independent of the internal models' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the internal models;

(ii) An ongoing monitoring process that includes verification of processes and the comparison of the Enterprise's model outputs with relevant internal and external data sources or estimation techniques; and

(iii) An outcomes analysis process that includes backtesting.

(3) The Enterprise must stress test the market risk of its covered positions at a frequency appropriate to each portfolio, and in no case less frequently than quarterly. The stress tests must take into account concentration risk (including concentrations in single issuers, industries, sectors, or markets), illiquidity under stressed market conditions, and risks arising from the Enterprise's trading activities that may not be adequately captured in its internal models.

(4) The Enterprise must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the Enterprise's market risk measurement systems, including the activities of the business units and independent risk control unit, compliance with policies and procedures, and calculation of the Enterprise's measures for

spread risk under this subpart. At least annually, the internal audit function must report its findings to the Enterprise's board of directors (or a committee thereof).

(d)

Internal assessment of capital adequacy.

(e)

Documentation.

§ 1240.204

Measure for spread risk.

(a)

General requirement

In general.

(2)

Measure for spread risk.

(b)

Single point approach

General.

(i) The market value of the covered position; multiplied by

(ii) The applicable single point shock assumption for the covered position under paragraph (b)(2) of this section.

(2)

Applicable single point shock assumption.

(i) 0.0475 for an RPL or an NPL;

(ii) 0.0160 for a reverse mortgage loan; and

(iii) 0.0410 for a reverse mortgage security.

(c)

Spread duration approach

General.

(i) The market value of the covered position; multiplied by

(ii) The spread duration of the covered position determined by the Enterprise using one or more of its internal models; multiplied by

(iii) The applicable spread shock assumption under paragraph (c)(2) of this section.

(2)

Applicable spread shock assumption.

(i) 0.0015 for a multifamily mortgage exposure;

(ii) 0.0265 for a PLS; and

(iii) 0.0100 for an MBS guaranteed by an Enterprise or by Ginnie Mae and secured by multifamily mortgage exposures (other than IO securities guaranteed by an Enterprise or Ginnie Mae).

§ 1240.205

Market risk disclosures.

(a)

Scope.

(b)

Location.

(c)

Disclosure policy.

(d)

Quantitative disclosures.

(i) Exposure amounts for each product type included in covered positions as described in § 1240.202; and

(ii) Risk-weighted assets for each product type included in covered positions as described in § 1240.202.

(2) In addition, the Enterprise must disclose publicly the aggregate amount of on-balance sheet and

off-balance sheet securitization positions by exposure type at least quarterly.

(e)

Qualitative disclosures.

(1) The composition of material portfolios of covered positions;

(2) The Enterprise's valuation policies, procedures, and methodologies for covered positions including, for securitization positions, the methods and key assumptions used for valuing such positions, any significant changes since the last reporting period, and the impact of such change;

(3) The characteristics of the internal models used for purposes of this subpart;

(4) A description of the approaches used for validating and evaluating the accuracy of internal models and modeling processes for purposes of this subpart;

(5) For each market risk category (that is, interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk), a description of the stress tests applied to the positions subject to the factor;

(6) The results of the comparison of the Enterprise's internal estimates for purposes of this subpart with actual outcomes during a sample period not used in model development; and

(7) A description of the Enterprise's processes for monitoring changes in the market risk of securitization positions, including how those processes differ for resecuritization positions.

[87 FR 33434, June 2, 2022]

Subpart GStability Capital Buffer

§ 1240.400

Stability capital buffer.

(a)

Definitions.

(1)

Mortgage assets

(i) The unpaid principal balance of its single-family mortgage exposures, including any single-family

loans that secure MBS guaranteed by the Enterprise;

(ii) The unpaid principal balance of its multifamily mortgage exposures, including any multifamily mortgage exposures that secure MBS guaranteed by the Enterprise;

(iii) The carrying value of its MBS guaranteed by an Enterprise, MBS guaranteed by Ginnie Mae, PLS, and other securitization exposures (other than its retained CRT exposures); and

(iv) The exposure amount of any other mortgage assets.

(2)

Residential mortgage debt outstanding

(b)

Amount.

(1) The ratio of:

(i) The mortgage assets of the Enterprise as of December 31 of the previous calendar year; to

(ii) The residential mortgage debt outstanding as of December 31 of the previous calendar year, as published by FHFA;

(2) Minus 0.05;

(3) Multiplied by 5;

(4) Divided by 100; and

(5) Multiplied by the adjusted total assets of the Enterprise, as of December 31 of the previous calendar year.

(c)

Effective date of an adjusted stability capital buffer

Increase in stability capital buffer.

i.e.,

(2)

Decrease in stability capital buffer.

i.e.,

(d)

Initial stability capital buffer.

(1) The ratio of:

(i) The mortgage assets of the Enterprise as of December 31, 2020; to

(ii) The residential mortgage debt outstanding as of December 31, 2020, as published by FHFA;

(2) Minus 0.05;

(3) Multiplied by 5;

(4) Divided by 100; and

(5) Multiplied by the adjusted total assets of the Enterprise as of December 31, 2020.

Effective Date Note:

At 88 FR 83481, Nov. 30, 2023, § 1240.400 was amended by revising paragraph (c)(1) and removing paragraph (d), effective Apr. 1, 2024. For the convenience of the user, the revised text is set forth as follows:

§ 1240.400

Stability capital buffer.

(c) * * *

(1)

Increase in stability capital buffer.

i.e.,

Subpart HCapital Planning and Stress Capital Buffer Determination

Source:

87 FR 33617, June 3, 2022, unless otherwise noted.

§ 1240.500

Capital planning and stress capital buffer determination.

(a)

Purpose.

(b)

Scope and reservation of authority

Applicability.

(2)

Reservation of authority.

(c)

Definitions.

Adjusted total assets

Advanced approaches

Capital action

Capital distribution

Capital plan

Capital plan cycle

Capital policy

Common equity tier 1 capital

Effective capital distribution limitations

Final planned capital distributions

Internal baseline scenario

Internal stress scenario

Planning horizon

Regulatory capital ratio

Severely adverse scenario

Stability capital buffer

Stress capital buffer

Supervisory stress test

(d)

Capital planning requirements and procedures

Annual capital planning.

(ii) An Enterprise must submit its complete capital plan to FHFA by May 20 of each calendar year, or such later date as directed by FHFA.

(iii) The Enterprise's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (d)(1)(ii) of this section:

(A) Review the robustness of the Enterprise's process for assessing capital adequacy;

(B) Ensure that any deficiencies in the Enterprise's process for assessing

(C) Approve the Enterprise's capital plan.

(2)

Mandatory elements of capital plan.

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the Enterprise's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, expenses, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the Enterprise, over the planning horizon under a range of scenarios, including the Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios that FHFA may provide the Enterprise after giving notice to the Enterprise;

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon. Planned capital actions must be consistent with any effective capital distribution limitations, except as may be adjusted pursuant to paragraph (g) of this section. In determining whether an Enterprise's planned capital distributions are consistent with effective capital distribution limitations, an Enterprise must assume that:

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(ii) A detailed description of the Enterprise's process for assessing capital adequacy, including:

(A) A discussion of how the Enterprise will, under expected and stressful conditions, maintain capital commensurate with its risks, and maintain capital above the regulatory capital ratios;

(B) A discussion of how the Enterprise will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The Enterprise's capital policy; and

(iv) A discussion of any expected changes to the Enterprise's business plan that are likely to have a material impact on the Enterprise's capital adequacy or liquidity.

(3)

Data collection.

(i) The Enterprise's financial condition, including its capital;

(ii) The Enterprise's structure;

(iii) Amount and risk characteristics of the Enterprise's on- and off-balance sheet exposures, including exposures within the Enterprise's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The Enterprise's relevant policies and procedures, including risk management policies and procedures;

(v) The Enterprise's liquidity profile and management;

(vi) The loss, revenue, and expense estimation models used by the Enterprise for stress scenario

analysis, including supporting documentation regarding each model's development and validation; and

(vii) Any other relevant qualitative or quantitative information requested

(4)

Resubmission of a capital plan.

(A) The Enterprise determines there has been or will be a material change in the Enterprise's risk profile, financial condition, or corporate structure since the Enterprise last submitted the capital plan to FHFA; or

(B) FHFA instructs the Enterprise in writing to revise and resubmit its capital plan, as necessary to monitor risks to capital adequacy, for reasons including, but not limited to:

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(ii) FHFA may extend the 30-day period in paragraph (d)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as FHFA determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, an Enterprise may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(5)

Confidential treatment of information submitted.

(e)

Calculation of the stress capital buffer

General.

(2)

Stress capital buffer calculation.

(i) The following calculation:

(A) The ratio of an Enterprise's common equity tier 1 capital to adjusted total assets, as of the final quarter of the previous capital plan cycle, unless otherwise determined by FHFA; minus

(B) The lowest projected ratio of the Enterprise's common equity tier 1 capital to adjusted total assets, in any quarter of the planning horizon under a supervisory stress test; plus

(C) The ratio of:

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(3)

Recalculation of stress capital buffer.

(f)

Review of capital plans by FHFA.

(1) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential

(2) The reasonableness of the Enterprise's capital plan, the assumptions and analysis underlying the capital plan, and the robustness of its capital adequacy process;

(3) Relevant supervisory information about the Enterprise and its subsidiaries;

(4) The Enterprise's regulatory and financial reports, as well as supporting data that would allow for an analysis of the Enterprise's loss, revenue, and reserve projections;

(5) The results of any stress tests conducted by the Enterprise or FHFA; and

(6) Other information requested or required by FHFA, as well as any other information relevant, or

related, to the Enterprise's capital adequacy.

(g)

FHFA notice of stress capital buffer; final planned capital distributions

Notice.

(2)

Response to notice

Request for reconsideration of stress capital buffer.

(ii)

Adjustments to planned capital distributions.

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect; and

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(B) Notify FHFA of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario.

(3)

Final planned capital distributions.

(i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and

(ii) The expiration of the time for adjusting planned capital distributions

(4)

Effective date of final stress capital buffer.

(ii) Unless otherwise determined by FHFA, an Enterprise's final planned capital distributions and

final stress capital buffer shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5)

Publication.

(i) The stress capital buffer provided to an Enterprise under paragraph (g)(1) or (h)(5) of this section;

(ii) Adjustments made pursuant to paragraph (g)(2)(ii) of this section;

(iii) A summary of the results of the supervisory stress test; and

(iv) Other information.

(h)

Administrative remedies; request for reconsideration.

(1)

General.

(2)

Timing of request.

(3)

Contents of request.

(ii) A request for reconsideration may include a request for an informal hearing on the Enterprise's request for reconsideration.

(4)

Hearing.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that FHFA may extend this period upon notice to the requesting party.

(5)

Response to request.

(6)

Distributions during the pendency of a request for reconsideration.

(i)

Approval requirements for certain capital actions

Circumstances requiring approval

resubmission of a capital plan.

(2)

Contents of request.

(i) The Enterprise's capital plan or a discussion of changes to the Enterprise's capital plan since it was last submitted to FHFA;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by FHFA (which may include, among other things, an assessment of the Enterprise's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3)

Approval of certain capital distributions.

(ii) In acting on a request for prior approval of a capital distribution, FHFA will apply the considerations and principles in paragraph (f) of this section, as appropriate. In addition, FHFA may disapprove the transaction if the Enterprise does not provide all of the information required to be submitted under paragraph (i)(2) of this section.

(4)

Disapproval and hearing.

(ii) FHFA may, in its sole discretion, order an informal hearing if FHFA finds that a hearing is

appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that FHFA may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of FHFA shall be given to the Enterprise within 60 calendar days of the conclusion of any informal hearing ordered by FHFA, provided that FHFA may extend this period upon notice to the requesting party.

(iv) While FHFA's decision is pending and until such time as FHFA approves the capital distribution at issue, the Enterprise may not make such capital distribution.

(j)

Post notice requirement.

(1) The capital distribution was approved pursuant to paragraph (i)(3) of this section; or

(2) The dollar amount of the capital distribution will exceed the dollar amount of the Enterprise's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

§ § 1240.501-1240.502

[Reserved]

Pt. 1242

PART 1242RESOLUTION PLANNING

Sec.

1242.1

Purpose; identification as a prudential standard.

1242.2

Definitions.

1242.3

Identification of core business lines.

1242.4

Authority:

12 U.S.C. 4511; 12 U.S.C. 4513; 12 U.S.C. 4513b; 12 U.S.C. 4514; 12 U.S.C. 4517; 12 U.S.C. 4526; and 12 U.S.C. 4617.

Source:

86 FR 23587, May 4, 2021, unless otherwise noted.

§ 1242.1

Purpose; identification as a prudential standard.

(a)

Purpose.

(1) Minimizes disruption in the national housing finance markets by providing for the continued operation of the core business lines of an Enterprise in receivership by a newly constituted limited-life regulated entity;

(2) Preserves the value of an Enterprise's franchise and assets;

(3) Facilitates the division of assets and liabilities between the limited-life regulated entity and the receivership estate;

(4) Ensures that investors in mortgage-backed securities guaranteed by the Enterprises and in Enterprise unsecured debt bear losses in accordance with the priority of payments established in the

Safety and Soundness Act while minimizing unnecessary losses and costs to these investors; and

(5) Fosters market discipline by making clear that no extraordinary government support will be available to indemnify investors against losses or fund the resolution of an Enterprise.

(b)

Identification as a prudential standard; effect of identification.

(1) The determination of a deficiency in a resolution plan; or

(2) The failure to undertake actions or changes identified by FHFA in the notice provided pursuant to § 1242.7(b)(1), to be a failure to meet a standard for purposes of § 1236.4 of this chapter. In its discretion, FHFA may also deem a revised, resubmitted resolution plan to be a corrective plan for purposes of § 1236.4 of this chapter.

§ 1242.2

Definitions.

Unless otherwise indicated, terms used in this part have the meanings that they have in 12 CFR part 1201 and in the Federal Housing Enterprises Financial Safety and Soundness Act (12 U.S.C. 4501 et seq.

Core business line

Core business line

Credible,

(1) Demonstrates consideration of required and prohibited assumptions set forth at § 1242.5(b);

(2) Provides strategic analysis and detailed information as required by § 1242.5(c) through (g) that is well-founded and based on information and data related to the Enterprise that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets; and

(3) Plausibly achieves the purposes of § 1242.1(a).

Material change

(1) The resolvability of the Enterprise;

(2) The Enterprise's resolution strategy; or

(3) How the Enterprise's resolution plan is implemented. Material changes may include the identification of a new core business line or significant increases or decreases in business, operations, funding, or interconnections.

Rapid and orderly resolution

§ 1242.3

Identification of core business lines.

(a)

Enterprise preliminary identification; notice to FHFA; timing.

(2) Each Enterprise shall establish and implement a process to identify each of its core business lines. The process shall include a methodology for evaluating the Enterprise's participation in activities and markets that may be critical to the stability of the national housing finance markets or carrying out the statutory mission and purpose of the Enterprise. The methodology shall be designed, taking into account the nature, size, complexity, and scope of the Enterprise's operations, to identify and assess:

(i) The markets and activities in which the Enterprise participates or has operations;

(ii) The significance of those markets and activities with respect to the national housing finance markets or the Enterprise's obligation to carry out its statutory mission and purpose; and

(iii) The significance of the Enterprise as a provider or other participant in those markets and activities.

(3) Enterprise identification of any business line as a core business line is preliminary and is subject to review by FHFA. Each Enterprise must provide a notice of its preliminary identification of core business lines to FHFA, including a description of its methodology and the basis for identification of each core business line.

(4) The board of directors of the Enterprise shall approve each notice of preliminary identification of core business lines before submission to FHFA, with such approval noted in board minutes.

(5) Each Enterprise must conduct its initial identification process and submit its initial identification of core business lines to FHFA by the date that is three months after the effective date of the final rule. Thereafter, each Enterprise shall conduct periodic identification processes, determining the timing of each periodic process to ensure that the process for identification, including FHFA review and determination required by paragraph (b) of this section, can be complete in sufficient time for each succeeding required resolution plan to include the information required under § 1242.5 for each core business line. FHFA may also direct an Enterprise as to the timeframe for conducting any subsequent identification process.

(6) Each Enterprise must periodically review its identification process and update it as necessary to ensure its continued effectiveness.

(b)

FHFA identification of core business lines; notice to an Enterprise; timing of inclusion in resolution plan.

(2) FHFA may identify any business line of the Enterprise as a core business line, considering factors set forth in paragraph (a)(2) of this section or any other factor FHFA deems appropriate, following review of an Enterprise notice of preliminary identification or at any other time, on written notice to an Enterprise.

(3) If FHFA identifies a core business line under paragraph (b)(2) of this section, an Enterprise is not required to include that core business line in a resolution plan if that plan is due within six months after the Enterprise receives notice of identification from FHFA.

(c)

Reconsideration of business line identification

Reconsideration initiated by an Enterprise.

(ii) The board of directors of the Enterprise shall approve each request for reconsideration of identification before submission to FHFA, with such approval noted in board minutes.

(iii) FHFA will respond to an Enterprise request for reconsideration within three months after the date

on which a complete request is received.

(2)

Reconsideration initiated by FHFA.

(3)

FHFA notice of reconsideration.

(4)

Effect of reconsideration.

§ 1242.4

Credible resolution plan required; other notices to FHFA.

(a)

Credible resolution plan required; frequency and timing of plan submission

Credible resolution plan required; resolution plan submission dates.

(2)

Altering submission dates.

(3)

Interim updates.

(b)

Notice of extraordinary events; inclusion in next resolution plan.

(c)

Board of directors' approval of resolution plan.

(d)

Point of contact.

(e)

Incorporation of previously submitted resolution plan information by reference.

(1) The resolution plan seeking to incorporate information by reference clearly indicates:

(i) The information the Enterprise is incorporating by reference; and

(ii) Which of the Enterprise's previously submitted resolution plan(s) originally contained the information the Enterprise is incorporating by reference, including the specific location of that information in the previously submitted resolution plan; and

(2) The information the Enterprise is incorporating by reference remains accurate in all respects that are material to the Enterprise's resolution plan.

(f)

Extensions of time.

§ 1242.5

Informational content of a resolution plan; required and prohibited assumptions.

(a)

In general.

(b)

Required and prohibited assumptions when developing a resolution plan.

(1) Take into account that receivership of the Enterprise may occur under the severely adverse economic conditions provided to the Enterprise by FHFA in conjunction with any stress testing required or in another scenario provided by FHFA;

(2) Not assume the provision or continuation of extraordinary support by the United States to the Enterprise to prevent either its becoming in danger of default or in default (including, in particular, support obtained or negotiated on behalf of the Enterprise by FHFA in its capacity as supervisor, conservator, or receiver of the Enterprise, including the Senior Preferred Stock Purchase Agreements entered into by FHFA and the U.S. Department of the Treasury on September 7, 2008 and any amendments thereto); and

(3) Reflect statutory provisions that obligations and securities of the Enterprise issued pursuant to its authorizing statute, together with interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Enterprise.

(c)

Executive summary.

(1) Summary of the key elements of the Enterprise's strategic analysis;

(2) A description of each material change experienced by the Enterprise since submission of the Enterprise's prior resolution plan (or affirmation that no such change has occurred);

(3) Changes to the Enterprise's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from FHFA; or

(iii) Material change described pursuant to paragraph (c)(2) of this section; and

(4) Any actions taken by the Enterprise since submitting its prior resolution plan to improve the effectiveness of the resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to a rapid and orderly resolution.

(d)

Strategic analysis.

(1) Include detailed descriptions of

(i) Key assumptions and supporting analysis underlying the resolution plan, including any assumptions made concerning the economic or financial conditions that would be present at the time resolution would occur;

(ii) Actions, or ranges of actions, which if taken by the Enterprise could facilitate a rapid and orderly resolution and those actions that the Enterprise intends to take;

(iii) The corporate governance framework that supports determination of the specific actions to be taken to facilitate a rapid and orderly resolution as the Enterprise is becoming in danger of default (including identifying the senior management officials responsible for making those determinations and taking those actions);

(iv) Funding, liquidity, and capital needs of, and resources and loss absorbing capacity available to, the Enterprise, which shall be mapped to its core business lines, in the ordinary course of business

and in the event the Enterprise becomes in danger of default or in default;

(v) Considering the Enterprise's core business lines, a strategy for identifying assets and liabilities of the Enterprise to be transferred to a limited-life regulated entity; and for transferring operations of, and funding for, the Enterprise to a limited-life regulated entity, which shall be mapped to core business lines;

(vi) A strategy for preventing the failure or discontinuation of each core business line and its associated operations, services, functions, or supports as the core business line is transferred to a limited-life regulated entity, and actions that, in the Enterprise's view, FHFA could take to prevent or mitigate any adverse effects of such failure or discontinuation on the national housing finance markets;

(vii) A strategy for mitigating the effect on the Enterprise of another Enterprise becoming in danger of default or in default, on the continuation of each of the Enterprise's core business lines and its associated operations, services, functions, or supports as any assets or operations of the other Enterprise are transferred to the Enterprise;

(viii) The extent to which claims against the Enterprise by creditors and counterparties would be satisfied in accordance with § 1237.9 of this chapter and the manner and source of satisfaction of those claims consistent with the continuation of the Enterprise's core business lines by the limited-life regulated entity; and

(ix) A strategy for transferring or unwinding qualified financial contracts, as defined at 12 U.S.C. 4617(d)(8)(D)(i), in a manner consistent with 12 U.S.C. 4617(d)(8) through (11);

(2) Identify the time period(s) the Enterprise expects would be needed to successfully execute each action identified in paragraph (d)(1)(ii) of this section to facilitate rapid and orderly resolution, and any impediments to such actions;

(3) Identify and describe

(i) Any potential material weaknesses or impediments to rapid and orderly resolution as conceived in the Enterprise's plan;

(ii) Any actions or steps the Enterprise has taken or proposes to take, or which other market participants could take, to remediate or otherwise mitigate the weaknesses or impediments identified by the Enterprise; and

(iii) A timeline for the remedial or other mitigating action that the Enterprise proposes to take; and

(4) Provide a detailed description of the processes the Enterprise employs for

(i) Determining the current market values and marketability of the core business lines and material asset holdings of the Enterprise;

(ii) Assessing the feasibility of the Enterprise's plans (including timeframes) for executing any sales, divestitures, restructurings, recapitalizations, or other similar actions contemplated in the Enterprise's resolution plan; and

(iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding, and operations of the Enterprise and its core business lines.

(e)

Corporate governance relating to resolution planning.

(1) Include a detailed description of

(i) How resolution planning is integrated into the corporate governance structure and processes of the Enterprise;

(ii) The process for identifying core business lines, including a description of the Enterprise's methodology considering the requirements of § 1242.3(a);

(iii) Enterprise policies, procedures, and internal controls governing preparation and approval of the resolution plan; and

(iv) The nature, extent, and frequency of reporting to Enterprise senior executive officers and the board of directors regarding the development, maintenance, and implementation of the Enterprise's resolution plan;

(2) Provide the identity and position of the Enterprise senior management official primarily responsible for overseeing the development, maintenance, implementation, and submission of the

Enterprise's resolution plan and for the Enterprise's compliance with this part;

(3) Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the Enterprise since the date of the Enterprise's most recently submitted resolution plan to assess the viability of or improve the resolution plan of the Enterprise; and

(4) Identify and describe the relevant risk measures used by the Enterprise to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to FHFA.

(f)

Organizational structure, interconnections, and related information.

(1) Provide a detailed description of the Enterprise's organizational structure, including

(i) A list of all affiliates and trusts within the Enterprise's organization that identifies for each affiliate and trust (legal entity), the following information (provided that, where such information would be identical across multiple legal entities, it may be presented in relation to a group of identified legal entities):

(A) The percentage of voting and nonvoting equity of each legal entity listed; and

(B) The location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity identified;

(ii) A mapping of the Enterprise's operations, services, functions, and supports associated with each of its core business lines, identifying

(A) The entity, including any third-party providers, responsible for conducting each associated operation or service that supports the functioning of each core business line as well as the Enterprise's material asset holdings; and

(B) Liabilities related to such operations, services, and core business lines;

(2) Provide an unconsolidated balance sheet for the Enterprise and a consolidating schedule for all securitization trusts consolidated by the Enterprise;

(3) Provide a schedule showing all assets and liabilities of unconsolidated Enterprise securitization

trusts;

(4) Include a description of the material components of the liabilities of the Enterprise and each identified core business line that, at a minimum, separately identifies types and amounts of the short-term and long-term liabilities, secured and unsecured liabilities, and subordinated liabilities;

(5) Identify and describe the processes used by the Enterprise to

(i) Determine to whom the Enterprise has pledged collateral;

(ii) Identify the person or entity that holds such collateral; and

(iii) Identify the jurisdiction in which the collateral is located, and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the Enterprise;

(6) Describe any material off-balance sheet exposures (including guarantees and contractual obligations) of the Enterprise, including a mapping to each of its core business lines;

(7) Describe the practices of the Enterprise and its core business lines related to the booking of trading and derivatives activities;

(8) Identify material hedges of the Enterprise and its core business lines

(9) Describe the hedging strategies of the Enterprise;

(10) Describe the process undertaken by the Enterprise to establish exposure limits;

(11) Identify the third-party providers with which the Enterprise has significant business connections (including third parties performing or providing operations, services, functions, or supports associated with each core business line) and describe the business connections, dependencies and relationships with such third party;

(12) Report on the counterparty credit risk exposure to

(i) The 20 largest single-family mortgage sellers and the 20 largest single-family mortgage servicers to the Enterprise (where largest is determined as of the end of the quarter preceding submission of a resolution plan, and the Enterprise includes an entity that is among the largest in both categories in each separate report category); and

(ii) All multifamily sellers and servicers to the Enterprise, based on purchasing volume during the

preceding year.

(13) Report on insurance in force, risk in force, and exposure and potential future exposure related to all providers of loan-level mortgage insurance;

(14) Analyze whether the failure of a third-party provider to an Enterprise would likely have an adverse impact on an Enterprise or result in the Enterprise becoming in danger of default or in default, the availability of alternative providers, and the ability of the Enterprise to change providers when necessary; and

(15) Identify each trading, payment, clearing, or settlement system of which the Enterprise, directly or indirectly, is a member and on which the Enterprise conducts a material number or value amount of trades or transactions, and map membership in each such system to the Enterprise and its core business lines.

(g)

Management information systems.

(i) A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, automated underwriting, valuation, accounting, and financial and regulatory reporting, used by the Enterprise, and systems and applications containing records used to manage all qualified financial contracts. The description of each system or application provided shall identify the legal owner or licensor, the use or function of the system or application, service level agreements related thereto, any software and system licenses, and any intellectual property associated therewith;

(ii) A mapping of the key management information systems and applications to core business lines of the Enterprise that use or rely on such systems and applications;

(iii) An identification of the scope, content, and frequency of the key internal reports that senior management of the Enterprise and core business lines use to monitor the financial health, risks, and operation of the Enterprise and core business lines;

(iv) A description of the process for FHFA to access the management information systems and

applications identified in this paragraph (g); and

(v) A description and analysis of

(A) The capabilities of the Enterprise's management information systems to collect, maintain, and report, in a timely manner to management of the Enterprise and to FHFA, the information and data underlying the resolution plan; and

(B) Any gaps or weaknesses in such capabilities, and a description of the actions the Enterprise intends to take to promptly address such gaps, or weaknesses, and the timeframe for implementing such actions.

(h)

Identification of point of contact.

§ 1242.6

Form of resolution plan; confidentiality.

(a)

Form of resolution plan

Generally.

(2)

Content of public section.

(i) A description of each core business line, including associated operations and services;

(ii) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;

(iii) A description of derivative activities, hedging activities, and credit risk transfer instruments;

(iv) A list of memberships in material payment, clearing and settlement systems;

(v) The identities of the principal officers;

(vi) A description of the corporate governance structure and processes related to resolution planning;

(vii) A description of material management information systems; and

(viii) A description, at a high level, of strategies to facilitate resolution, covering such items as the range of potential purchasers of the Enterprise's core business lines and other significant assets, as well as measures that, if taken by the Enterprise, could minimize the risk that its resolution would have serious adverse effects on the national housing finance markets and minimize the amount of potential loss to the Enterprise's investors and creditors.

(b)

Confidential treatment of resolution plan.

(2) An Enterprise submitting a resolution plan or related materials pursuant to this part that desires confidential treatment of the information under 5 U.S.C. 552(b)(4), 12 CFR part 1202 (Freedom of Information Act), and 12 CFR part 1214 (availability of non-public information) may file a request for confidential treatment in accordance with those rules.

(3) To the extent permitted by law, information comprising the confidential section of a resolution plan will be treated as confidential.

(4) To the extent permitted by law, the submission of any nonpublic data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. The submission of any nonpublic data or information under this part shall be subject to the examination privilege.

§ 1242.7

Review of resolution plans; resubmission of deficient resolution plans.

(a)

FHFA acceptance of resolution plan; review for completeness.

(2) If FHFA determines that a resolution plan is incomplete or that substantial additional information is necessary to facilitate review of the resolution plan:

(i) FHFA shall provide notice to the Enterprise in writing of the area(s) in which the resolution plan is incomplete or with respect to which additional information is required; and

(ii) Within 30 days after receiving such notice (or such other time period as FHFA may establish in the notice), the Enterprise shall resubmit a complete resolution plan or such additional information as requested to facilitate review of the resolution plan.

(b)

FHFA review of complete plan; determination regarding deficient resolution plan.

(i) Identifies any deficiencies or shortcomings in the Enterprise's resolution plan (or confirms that no deficiencies or shortcomings were identified);

(ii) Identifies any planned actions or changes set forth by the Enterprise that FHFA agrees could facilitate a rapid and orderly resolution of the Enterprise; and

(iii) Provides any other feedback on the resolution plan (including feedback on timing of actions or changes to be undertaken by the Enterprise). FHFA will send the notification no later than 12 months after accepting a complete plan, unless FHFA determines in its discretion that extenuating circumstances exist that require delay.

(2) For purposes of paragraph (b)(1) of this section, a deficiency is an aspect of an Enterprise's resolution plan that FHFA determines presents a weakness that, individually or in conjunction with other aspects, could undermine the feasibility of the Enterprise's resolution plan. A shortcoming is a weakness or gap that raises questions about the feasibility of an Enterprise's resolution plan, but does not rise to the level of a deficiency. If a shortcoming is not satisfactorily explained or addressed before or in the submission of the Enterprise's next resolution plan, it may be found to be a deficiency in the Enterprise's next resolution plan. FHFA may identify an aspect of an Enterprise's resolution plan as a deficiency even if such aspect was not identified as a shortcoming in an earlier resolution plan submission.

(c)

Resubmission of a resolution plan.

(1) Revisions to the plan made by the Enterprise to address the identified deficiencies;

(2) Any changes to the Enterprise's business operations and corporate structure that the Enterprise

proposes to undertake to address a deficiency (including a timeline for completing such changes); and

(3) Why the Enterprise believes that the revised resolution plan is feasible and would facilitate a rapid and orderly resolution by FHFA as receiver.

§ 1242.8

No limiting effect or private right of action.

(a)

No limiting effect on resolution proceedings.

(b)

No private right of action.

Pt. 1248

PART 1248UNIFORM MORTGAGE-BACKED SECURITIES

Sec.

1248.1

Definitions.

1248.2

Purpose.

1248.3

General alignment.

1248.4

Enterprise consultation.

1248.5

Misalignment.

1248.6

Covered programs, policies, and practices.

1248.7

Remedial actions.

1248.8

De minimis

Authority:

12 U.S.C. 1451 note; 1716; 4511; and 4526.

Source:

84 FR 7799, Mar. 5, 2019, unless otherwise noted.

§ 1248.1

Definitions.

The definitions below are used to define terms for purposes of this part:

Align or alignment

Cohort

Conditional Prepayment Rate or CPR,

Covered Programs, Policies, or Practices

e.g.,

Fastest paying quartile of a cohort

specified pools,

Material misalignment

Misalign or misalignment

Mortgage-backed security or MBS

Specified pools

Supers

Three-month conditional prepayment rate (CPR3)

CPR3

t

t-2

t-1

t

4

where t indicates the month andSMM is the single month mortality rate, which equals(PMT

t

t

t

t

t

t

t

t

t

t

To-Be-Announced Eligible Mortgage-Backed Security (TBA-Eligible MBS)

Uniform Mortgage Backed Security or UMBS

§ 1248.2

Purpose.

The purpose of this part is to:

(a) Enhance liquidity in the MBS marketplace, and to that end, enable adoption of the UMBS, by achieving sufficient similarity of cash flows on cohorts of TBA-eligible MBS such that investors will accept delivery of UMBS from either issuer in settlement of trades on the TBA market.

(b) Provide transparency and durability into the process for creating alignment.

§ 1248.3

General alignment.

Each Enterprise's covered programs, policies, and practices must align with the other Enterprise's covered programs, policies, and practices.

(a) When aligning covered programs, policies, and practices, the Enterprises must consider:

(1) The effect of the alignment on TBA-eligible securities' pricing and particularly on the prepayment speeds of mortgages underlying TBA-eligible MBS.

(2) Options that provide the greatest benefit for investors, lenders, and mortgage borrowers.

(b) [Reserved]

§ 1248.4

Enterprise consultation.

When and in the manner instructed by FHFA, the Enterprises shall consult with each other on any issues, including changes to covered programs, policies, and practices that potentially or actually cause cash flows to TBA-eligible MBS investors to misalign. The Enterprises shall report to FHFA on the results of any such consultation.

§ 1248.5

Misalignment.

(a) The Enterprises must report any misalignment to FHFA.

(b) The Enterprises must submit, in a timely manner, a written report to FHFA on any material misalignment describing, at a minimum, the likely cause of material misalignment and the Enterprises' plan to address the material misalignment.

(c) FHFA will

temporarily

(1) In adjusting the percentages, FHFA will consider:

(i) The prevailing level and volatility of interest rates;

(ii) The level of credit risk embedded in the Enterprises' TBA-eligible MBS; and

(iii) Such other factors as FHFA may, in consultation with the Enterprises, determine to be appropriate to promote market confidence in the alignment of cash flows to TBA-eligible MBS investors and to foster the efficiency and liquidity of the secondary mortgage market.

(2) FHFA will publicly announce any temporary adjustment to the percentages in the definition of

align, misalignment, and material misalignment in a timely manner.

(3) If adjusted percentages remain in effect for six months or more, FHFA will amend this part's definitions by

Federal Register

(4) Temporarily adjusted percentages will remain in effect until six months after the date on which FHFA announced the temporary adjustment unless within six months of that date

(i) FHFA announces a reversion to the previously prevailing percentages; or

(ii) FHFA initiates the notice and comment process, in which case the temporary percentages will remain in effect until the conclusion of that process.

(d) FHFA will

temporarily

(1) In adjusting those definitions, FHFA will consider:

(i) Changes in prevailing market practices related to the identification of specified pools;

(ii) The prevailing interest rates environment;

(iii) Observed relationships between pool characteristics and prepayment behavior of the Enterprises' TBA-eligible MBS; and

(iv) Such other factors as FHFA may, in consultation with the Enterprises, determine to be appropriate to promote market confidence in the alignment of cash flows to TBA-eligible MBS investors and to foster the efficiency and liquidity of the secondary mortgage market.

(2) FHFA will publicly announce any temporary adjustment to the definitions of cohort and specified pools in a timely manner.

(3) If adjusted definitions remain in effect for six months or more, FHFA will amend this part's definitions by

Federal Register

(4) Temporarily adjusted definitions will remain in place until six months after the date on which FHFA announced the temporary adjustment unless within six months of that date

(i) FHFA announces a reversion to the previously prevailing definitions; or

(ii) FHFA initiates the notice and comment process, in which case the temporary definitions will remain in effect until the conclusion of that process.

§ 1248.6

Covered programs, policies, and practices.

(a)

Enterprise Change Management Processes.

(1) Submissions to FHFA must include projections for prepayment rates and for removals of delinquent loans under a range of interest rate environments and assumptions concerning borrower defaults.

(2) Submissions to FHFA must include an analysis of the impact on borrowers and impact on the fastest paying quartile of each cohort.

(3) Submissions to FHFA must include an analysis of identified risks and may include potential mitigating actions.

(b)

Enterprise Monitoring.

(c)

FHFA Monitoring.

§ 1248.7

Remedial actions.

(a) Based on its review of reports submitted by the Enterprises and reports issued by independent parties, if FHFA determines that there is misalignment, or the risk of misalignment, FHFA may:

(1) Require an Enterprise to undertake additional analysis, monitoring, or reporting to further the purposes of this part.

(2) Require an Enterprise to change covered programs, policies, and practices that FHFA determines conflict with the purposes of this part.

(b) To address material misalignment, FHFA may require additional and expedient Enterprise actions based on:

(1) Consultation with the Enterprises regarding the cause of the material misalignment;

(2) Review of Enterprise compliance with previously agreed upon or FHFA-required actions; and

(3) Review of the effectiveness of such actions to determine whether they are achieving the purpose of this part.

(c) Depending on the severity and cause of any material misalignment, FHFA, in its discretion, may:

(1) Require an Enterprise to terminate a program, policy, or practice; or

(2) Require the competing Enterprise to implement a comparable program, policy, or practice.

(d) When requiring an Enterprise to terminate a program, policy, or practice, or implement a comparable program, policy, or practice, FHFA will consider:

(1) The effect on TBA-eligible securities pricing and particularly on the prepayment speeds of mortgages underlying TBA-eligible MBS; and

(2) The costs borne by and the benefits likely to accrue to investors, lenders, and mortgage borrowers.

§ 1248.8

De minimis

FHFA may exclude from the requirements of this part covered programs, policies, or practices of an Enterprise as long as those covered programs, policies, or practices do not affect more than $5 billion in unpaid principal balance of that Enterprises' TBA-eligible MBS.

Pt. 1249

PART 1249BOOK-ENTRY PROCEDURES

Sec.

1249.10

Definitions.

1249.11

Authority:

12 U.S.C. 4501, 4502, 4511, 4513, 4526.

Source:

75 FR 55928, Sept. 14, 2010, unless otherwise noted.

§ 1249.10

Definitions.

(a)

General.

(b)

Other terms.

Book-entry Enterprise Security

Book-entry System

Definitive Enterprise Security

Eligible Book-entry Enterprise Security

Enterprise Security

Entitlement Holder

Federal Reserve Bank Operating Circular

Participant

Person,

Revised Article 8

Securities Documentation

Security

Transfer message

§ 1249.11

Maintenance of Enterprise Securities.

An Enterprise Security may be maintained in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security. A Book-entry Enterprise Security shall be maintained in the Book-entry System.

§ 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; and

(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) The operation of the Book-entry System as it applies to Enterprise Securities;

(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 § 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

(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.

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, 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 § 1249.12(b) or (d). The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such 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 in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 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

(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 Circulars, 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 Circulars 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.

(b)

Notice of attachment for Enterprise Securities in Book-entry System.

Pt. 1250

PART 1250FLOOD INSURANCE

Sec.

Authority:

12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

Source:

74 FR 2349, Jan. 15, 2009, unless otherwise noted.

§ 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.

§ 1250.2

Procedural requirements.

(a)

Procedures.

et seq.

(b)

Applicability.

(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.

(b)

Notice and hearing.

(c)

Amount.

(d)

Deposit of penalties.

(e)

Additional penalties.

(f)

Statute of limitations.

[74 FR 2349, Jan. 15, 2009, as amended at 81 FR 8642, Feb. 22, 2016; 81 FR 43031, July 1, 2016; 83 FR 43968, Aug. 29, 2018; 84 FR 9704, Mar. 18, 2019; 85 FR 4905, Jan. 28, 2020; 86 FR 7496, Jan. 29, 2021; 87 FR 1662, Jan. 12, 2022; 87 FR 14770, Mar. 16, 2022; 87 FR 80025, Dec. 29, 2022]

Pt. 1251

PART 1251CONTRIBUTIONS TO THE HOUSING TRUST AND CAPITAL MAGNET FUNDS

Sec.

1251.1

Purpose.

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 to originators of mortgages purchased or securitized by an 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

Housing Trust Fund

§ 1251.3

Prohibition on pass-through of cost of allocation; enforcement.

(a)

In general.

(b)

Enforcement.

§ 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.

Pt. 1252

PART 1252PORTFOLIO HOLDINGS

Sec.

1252.1

Enterprise portfolio holdings criteria.

1252.2

Effective duration.

Authority:

12 U.S.C. 4624.

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.

Pt. 1253

PART 1253PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

Sec.

Preservation of authority.

Authority:

12 U.S.C. 4511; 12 U.S.C. 4513; 12 U.S.C. 4526; 12 U.S.C. 4541.

Source:

88 FR 79229, Dec. 27, 2022, 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 (12 U.S.C. 4541), as amended (Safety and Soundness Act).

§ 1253.2

Definitions.

For purposes of this part:

Activity

Authorizing statute

Credit risk

Days

Market risk

New activity

New product

Operational risk

Pilot

§ 1253.3

New activity description and exclusions.

(a) A new activity is any of the following if not engaged in by the Enterprise on or before February

27, 2023:

(1) An activity;

(2) An enhancement, alteration, or modification to an activity that

(i) Requires a new resource, type of data, policy, modification to an existing policy, process, or infrastructure;

(ii) Expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise; or

(iii) Involves a new category of borrower, investor, counterparty, or collateral;

(3) A pilot or a modification to the volume or duration of a pilot, including a modification to a pilot that commenced before February 27, 2023; or

(4) An activity that results from a pilot (including from a pilot that commenced before February 27, 2023) or an enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) to an activity that results from a pilot (including from a pilot that commenced before February 27, 2023).

(b) A new activity excludes:

(1) An enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) to the technology, operating system, or software to operate the automated loan underwriting system of an Enterprise that was in existence as of July 30, 2008.

(2) An enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an Enterprise, provided that such enhancement, alteration, or modification does not alter the underlying transaction so as to include services or financing, other than residential mortgage financing.

(3) Pursuant to the requirements of § 1253.8, any activity undertaken by an Enterprise that is substantially similar to

(i) The automated loan underwriting system of an Enterprise that was in existence as of July 30,

2008, including or any enhancement, alteration, or modification to the technology, operating system, or software to operate the automated loan underwriting system;

(ii) Any enhancement, alteration, or modification to mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an Enterprise, provided that such activity does not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; and

(iii) A new product that the Director has approved for either Enterprise under § 1253.6(a) through (f) or § 1253.7 or a new product that is otherwise available to either Enterprise under § 1253.6(h).

(4) Any Enterprise business practice, transaction, or conduct performed solely to facilitate the administration of an Enterprise's internal affairs.

§ 1253.4

New product determination.

(a) A new product is any new activity that the Director determines merits public notice and comment about whether it is in the public interest.

(b) The factors that the Director may consider when determining whether a new product is in the public interest are:

(1) The degree to which the new product might advance any of the purposes of the Enterprise under its authorizing statute;

(2) The degree to which the new product serves underserved markets and housing goals as set forth in sections 1332-1335 of the Safety and Soundness Act (12 U.S.C. 4562-4565);

(3) The degree to which the new product is being or could be supplied by other market participants;

(4) The degree to which the new product promotes competition in the marketplace or, to the contrary, would result in less competition;

(5) The degree to which the new product overcomes natural market barriers or inefficiencies;

(6) The degree to which the new product might raise or mitigate risks to the mortgage finance or financial system;

(7) The degree to which the new product furthers fair housing and fair lending; and

(8) Such other factors as determined appropriate by the Director.

§ 1253.5

Notice of new activity.

(a) Before commencing a new activity, an Enterprise must submit a notice of new activity to FHFA. An Enterprise may request prior consultation with FHFA about whether a notice of new activity is required.

(b) In support of its notice of new activity, the Enterprise shall submit thorough, complete, and specific information as described under § 1253.9(a). FHFA will evaluate the notice of new activity to determine if the submission contains sufficient information to enable the Director to determine whether the new activity is a new product subject to prior approval. Once FHFA makes the determination that the submission is complete, FHFA will notify the Enterprise that the submission is received for purposes of 12 U.S.C. 4541(e)(2)(B).

(c) Nothing in this regulation limits or restricts FHFA from reviewing a notice of new activity under any other applicable law, under the Director's authority to review for safety and soundness, or to determine whether the activity complies with the Enterprise's authorizing statute. FHFA may conduct such a review as part of its determination that the notice of new activity submission is complete.

(d) No later than 15 days after FHFA notifies the Enterprise that the submission is received, the Director will make a determination on the notice of new activity and will notify the Enterprise accordingly. If the Director determines that the new activity is a new product, the Enterprise must elect to either submit a request for prior approval of the new product under § 1253.6 or discontinue its plan to offer the new product to the market.

(e) If the Director determines that the new activity is not a new product, or if after the passage of 15 days the Director does not make a determination whether the new activity is a new product, the Enterprise may commence the new activity. The Director may establish terms, conditions, or limitations on the Enterprise's engagement in the new activity as the Director determines to be

appropriate and with which the Enterprise must comply in order to engage in the new activity.

(f) If the Director does not make a determination within the 15-day period, the absence of such determination does not limit or restrict the Director's safety and soundness authority or the Director's authority to review the new activity to confirm that the activity is consistent with the Enterprise's authorizing statute.

§ 1253.6

Request for prior approval of a new product; public notice; standards for approval.

(a) An Enterprise must submit a request for prior approval of a new product to FHFA before offering a new product to the market.

(1) An Enterprise may submit a request for prior approval of a new product if the Director determines that a new activity is a new product under § 1253.5(d) or, following consultation with FHFA, if the Director authorizes the Enterprise to submit such a request without first submitting a notice of new activity. An Enterprise must submit a request for prior approval of a new product to FHFA before offering a new product to the market.

(2) In support of its request for prior approval of a new product, the Enterprise shall submit thorough, complete, and specific information as described under § 1253.9(b).

(3) FHFA will evaluate the request to determine if the submission contains sufficient information for FHFA to prepare a public notice such that the public will be able to provide fully informed comments on the new product. Once FHFA makes the determination that the submission is complete, FHFA will notify the Enterprise that the submission is received for purposes of 12 U.S.C. 4541(c)(2).

(b) Following FHFA's determination that a submission is complete, FHFA will publish a public notice soliciting

Federal Register

(1) The public notice will describe the new product and will include such information from the request for prior approval of a new product as necessary to provide the public with sufficient notice and opportunity to comment on the new product. The public notice will provide instructions for the

submission of public comments.

(2) The public will have 30 days from the date that the public notice is published in the Federal Register

(3) The Director will consider all public comments received by the closing date of the comment period.

(c) No later than 30 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.

(d) The Director may approve the new product if the Director determines that the new product:

(1) In the case of Fannie Mae, is authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or

(2) In the case of Freddie Mac, is authorized under 12 U.S.C. 1454(a)(1), (4), or (5); and

(3) Is in the public interest; and

(4) Is consistent with the safety and soundness of the Enterprise or the mortgage finance system.

(e) The Director may consider the factors provided in § 1253.4(b) when determining whether a new product is in the public interest.

(f) The Director may establish terms, conditions, or limitations on the Enterprise's offering of the new product with which the Enterprise must comply in order to offer the new product.

(g) If the Director disapproves the new product, the Enterprise may not offer the new product.

(h) If the Director does not make a determination within 30 days after the end of the public comment period, the Enterprise may offer the new product. The absence of such a determination within 30 days does not limit or restrict the Director's safety and soundness authority or the Director's authority to review the new product to confirm that the product is consistent with the Enterprise's authorizing statute.

(i) The Director may request any information in addition to that supplied in the completed request for prior approval of a new product if, as a result of public comment or otherwise in the course of

considering the request, the Director believes that the information is necessary for the Director's decision. The Director may disapprove a new product if the Director does not receive the information requested from the Enterprise in sufficient time to permit adequate evaluation of the information within the time periods set forth in this section.

§ 1253.7

Temporary approval of a new product.

(a) The Director may approve a new product without first seeking public comment as described in § 1253.6 if:

(1) In addition to the information required by § 1253.9(b), the Enterprise submits a specific request for temporary approval that describes the exigent circumstances that make the delay associated with a 30-day public comment period contrary to the public interest and the Director determines that exigent circumstances exist and that delay associated with first seeking public comment would be contrary to the public interest; or

(2) Notwithstanding the absence of a request by the Enterprise for temporary approval, the Director determines on the Director's own initiative that there are exigent circumstances that make the delay associated with first seeking public comment contrary to the public interest.

(b) The Director may impose terms, conditions, or limitations on the temporary approval to ensure that the new product offering is consistent with the factors in § 1253.6(d).

(c) If the Director grants temporary approval, the Director will notify the Enterprise in writing of the Director's decision and include the period for which it is effective and any terms, conditions or limitations. Upon granting of temporary approval, FHFA will

(d) If the Director denies a request for temporary approval, the Director will notify the Enterprise in writing of the Director's decision and will evaluate the new product in accordance with this section.

§ 1253.8

Substantially similar activities.

(a) An Enterprise shall notify FHFA of its intent to commence an activity that is substantially similar

to any of the following activities at least 15 days prior to offering the activity:

(1) The automated loan underwriting system of an Enterprise that was in existence as of July 30, 2008, including any enhancement, alteration, or modification to the technology, operating system, or software to operate the automated loan underwriting system;

(2) Any enhancement, alteration, or modification to mortgage terms and conditions or underwriting criteria relating to mortgages that are purchased or guaranteed by an Enterprise, provided that such activity does not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; or

(3) A new product that the Director has approved for either Enterprise under § 1253.6(a) through (f) or § 1253.7 or a new product that is otherwise available to either Enterprise under § 1253.6(h).

(b) The Director may determine that an activity is substantially similar to an activity described in paragraph (a)(1) or (2) of this section, if the activity is:

(1) A technology system that applies mortgage terms and conditions or underwriting criteria to residential mortgages that are purchased or guaranteed by an Enterprise; or

(2) An enhancement, alteration, or modification to the technology, operating system, or software to operate a technology system described in paragraph (b)(1) of this section.

(c) The Director may determine that an activity is substantially similar to an activity described in paragraph (a)(3) of this section, if the activity:

(1) Requires the same or a similar resource, type of data, policy, process, and infrastructure;

(2) Entails the same or similar levels of credit risk, market risk, and operational risk to the Enterprise; and

(3) Involves the same or a similar category of borrower, investor, counterparty, and collateral.

(d) The notification is not required to be a notice of new activity. The notification shall include the name and a complete and specific description of the activity, as well as an explanation of why the Enterprise believes the activity qualifies as a substantially similar activity under paragraph (a) of this section.

(e) Public notice and comment is not required in connection with offering substantially similar activities.

(f) If the Director determines an activity is not a substantially similar activity, the Enterprise must submit a notice of new activity under § 1253.5 or a request for prior approval of a new product under § 1253.6 and may not proceed or continue with the activity except pursuant to the requirements in this part.

§ 1253.9

New activity and new product submission requirements.

(a) A notice of new activity must provide the following items of information and appropriate supporting documentation. The corresponding paragraph number should be listed with the relevant information provided:

(1) Provide the name of the new activity and a complete and specific description of the new activity that identifies under which paragraph(s) of § 1253.3(a) the activity is described.

(2) Describe the business rationale, the intended market, the business line, and what products are currently being offered or are proposed to be offered under such business line. Also, include a description of any market research performed relating to the new activity.

(3) State the anticipated commencement date for the new activity. Provide analysis, including assumptions, development expenses, any applicable fees, expectations for the impact of and projections for the quarterly size (for example, in terms of cost, personnel, volume of activity, or risk metrics) of the

(4) If the new activity is a pilot, include the parameters, such as duration, volume of activity, and performance. If the new activity is the result of a pilot, include an analysis on the effectiveness of the pilot that describes the pilot objectives and success criteria; volume of activity; performance; risk metrics and controls; and the modifications made for a broader offering and rationale.

(5) Provide a fair housing and fair lending self-evaluation of the new activity. The self-evaluation should, at a minimum, include data on the predicted impact of the new activity for protected class

categories; a summary of reasonable alternatives considered; if disparities are identified, the business justification for the new activity; and the extent to which the activity furthers fair housing and fair lending.

(b) A request for prior approval of a new product must provide the following items of information with appropriate supporting documentation. The corresponding paragraph number should be listed with the relevant information provided:

(1) Provide the information required for a notice of new activity as identified in paragraph (a) of this section.

(2) Describe the business requirements for the new product including technology requirements. Describe the Enterprise business units involved in conducting the new product, including any affiliation or subsidiary relationships, any third-party relationships, and the roles of each. Describe the reporting lines and planned oversight of the new product.

(3) Provide a legal analysis as to whether the new product is

(i) In the case of Fannie Mae, authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or

(ii) In the case of Freddie Mac, authorized under 12 U.S.C. 1454(a)(1), (4), or (5).

(4) Provide copies of all notice and application documents, including any application for patents or trademarks, the Enterprise has submitted to other Federal, State or local government regulators relating to the new product.

(5) Describe the impact of the new product on the public interest and provide information to address the factors listed in § 1253.4(b).

(6) Describe how the new product is consistent with the safety and soundness of the Enterprise or the mortgage finance system.

(7) Explain any accounting treatment proposed for the new product.

(c) FHFA may require an Enterprise to submit such further information as the Director deems necessary to make a determination on a notice of new activity or a request for prior approval of a

new product, at the time of the original submission or any time thereafter.

(d) An Enterprise shall certify, through an executive officer, that a notice of new activity or a request for prior approval of a new product and any supporting material submitted to FHFA pursuant to this part contain no material misrepresentations or omissions. FHFA may review and verify any information filed in connection with a notice of new activity or request for prior approval of a new product.

§ 1253.10

Public disclosure.

In addition to information disclosed in the public notice on a new product, FHFA will make public information related to the Director's determinations on new activity and new product submissions within a reasonable time period after the end of the calendar year during which either Enterprise filed such a submission. Any disclosure under this paragraph will omit any confidential and proprietary information not previously disclosed as part of a public notice on a new product.

§ 1253.11

Preservation of authority.

The Director's exercise of the Director's authority pursuant to the prior approval authority for products under 12 U.S.C. 4541, and this regulation, in no way restricts:

(a) The safety and soundness authority of the Director over all new and existing products or activities; or

(b) The authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with

Pt.1254

PART 1254VALIDATION AND APPROVAL OF CREDIT SCORE MODELS

Sec.

1254.1

Purpose and scope.

Authority:

12 U.S.C. 4511, 4513, 4526 and Sec. 310, Pub. L. 115-174, 132 Stat. 1296.

Source:

84 FR 41904, Aug. 16, 2019, unless otherwise noted.

§ 1254.1

Purpose and scope.

(a) The purpose of this part is to set forth standards and criteria for the process an Enterprise must establish to validate and approve any credit score model that produces any credit score that the Enterprise requires in its mortgage purchase procedures and systems.

(b) The validation and approval process for a credit score model includes the following phases: Solicitation of Applications, Submission of Applications and Initial Review, Credit Score Assessment, and Enterprise Business Assessment.

§ 1254.2

Definitions.

For purposes of this part, the following definitions apply. Definitions of other terms may be found in 12 CFR part 1201, General Definitions Applying to All Federal Housing Finance Agency Regulations.

Credit score

Credit score model

Credit score model developer

Days

Mortgage

Person

§ 1254.3

Computation of time.

For purposes of this part, each time period begins on the day after the relevant event occurs

(e.g.,

§ 1254.4

Requirements for use of a credit score.

(a)

Enterprise use of a credit score.

(1) The credit score must be derived from a credit score model that has been approved by the

Enterprise in accordance with this part; and

(2) The Enterprise must provide for the use of the credit score by any automated underwriting system that uses a credit score and any other procedures and systems used by the Enterprise that use a credit score for mortgage purchases.

(b)

Replacement of credit score model.

(c)

No right to continuing use.

§ 1254.5

Solicitation of applications.

(a)

Required solicitations.

(1) The requirement to submit a Credit Score Solicitation to FHFA for review;

(2) A deadline for submission of the Credit Score Solicitation; and

(3) A timeframe for the solicitation period.

(b)

Credit Score Solicitation.

(1) The opening and closing dates of the solicitation time period during which the Enterprise will accept applications from credit score model developers;

(2) A description of the information that must be submitted with an application;

(3) A description of the process by which the Enterprise will obtain data for the assessment of the credit score model;

(4) A description of the process for the Credit Score Assessment and the Enterprise Business Assessment; and

(5) Any other requirements as determined by the Enterprise.

(c)

Review by FHFA.

(d)

Publication.

(e)

Initial solicitation.

§ 1254.6

Submission and initial review of applications.

(a)

Application requirements.

(1)

Application fee.

(2)

Fair lending certification and compliance.

(3)

Use of model by industry.

(4)

Qualification of credit score model developer.

i.e.,

(i) Corporate structure, including any business relationship to any other person through any degree of common ownership or control;

(ii) Governance structure; and

(iii) Past financial performance.

(5)

Other requirements.

(b)

Historical consumer credit data.

(c)

Acceptance of applications.

(1)

Notice of status.

(2)

Complete application.

§ 1254.7

Credit Score Assessment.

(a)

Requirement for Credit Score Assessment.

(b)

Testing for Credit Score Assessment.

(c)

Criteria for Credit Score Assessment.

(1)

Testing for accuracy.

(i)

Initial Credit Score Assessment.

(ii)

Subsequent Credit Score Assessments.

(2)

Testing for reliability.

(3)

Testing for integrity.

(4)

Other requirements.

(c)

Third-party testing.

(1) An Enterprise; or

(2) An independent third party selected or approved by an Enterprise.

(d)

Timing of Credit Score Assessment.

(2) An Enterprise must provide notice to the applicant within 30 days of a determination that the application has passed the Credit Score Assessment.

§ 1254.8

Enterprise Business Assessment.

(a)

Requirement for Enterprise Business Assessment.

(b)

Criteria for Enterprise Business Assessment.

(1)

Accuracy; reliability.

(2)

Fair lending assessment.

(3)

Impact on Enterprise operations and risk management, and impact on industry.

(4)

Competitive effects.

(5)

Third-Party Provider Review.

(6)

Other requirements.

(c)

Timing of Enterprise Business Assessment.

(d)

FHFA Evaluation.

(1) Require an Enterprise to undertake additional analysis, monitoring, or reporting to further the purposes of this part;

(2) Require an Enterprise to permit the use of a single credit score model or multiple credit score models; or

(3) Require any other change to an Enterprise program, policy, or practice related to the Enterprise's use of credit scores.

§ 1254.9

Determinations on applications.

(a)

Enterprise determinations subject to prior review and approval by FHFA.

(b)

Approval of a credit score model.

(c)

Disapproval of a credit score model.

§ 1254.10

Withdrawal of application.

At any time during the validation and approval process, an applicant may withdraw its application by notifying an Enterprise. The Enterprise may, in its sole discretion, determine whether to return any portion of the application fee paid by the applicant.

§ 1254.11

Pilot programs.

(a)

Pilots permitted; duration of pilots.

(b)

Prior notice to FHFA.

SUBCHAPTER DFEDERAL HOME LOAN BANKS

Pt. 1260

PART 1260SHARING OF INFORMATION AMONG FEDERAL HOME LOAN BANKS

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

Proprietary information

§ 1260.2

Bank information to be shared.

(a)

General.

(b)

Notice.

(c)

Director's orders.

§ 1260.3

Requests to withhold proprietary information.

(a)

General.

(b)

Timing of requests.

General.

(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,

(2)

As otherwise specified by FHFA.

(c)

1261.15

Minimum number of member directorships.

1261.16

[Reserved]

Subpart CFederal Home Loan Bank Directors' Compensation and Expenses

1261.20

Definitions.

1261.21

General.

1261.22

Directors' compensation policy.

1261.23

Director disapproval.

1261.24

Board meetings.

Subpart D [Reserved]

Authority:

12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

Source:

73 FR 55715, Sept. 26, 2008, unless otherwise noted.

Subpart ADefinitions

Source:

75 FR 17039, May 5, 2010, unless otherwise noted.

§ 1261.1

[Reserved]

Subpart BFederal Home Loan Bank Boards of Directors: Eligibility and Elections

§ 1261.2

Definitions.

As used in this Subpart B:

Advisory Council

Bona fide resident

(1) Maintains a principal residence in the Bank district; or

(2) If serving as an independent director, owns or leases in his or her own name a residence in the Bank district and is employed in a voting state in the Bank district.

FHFA ID number

Independent directorship

Member directorship

Method of equal proportions

Public interest director

Public interest directorship

Record date

Voting State

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51460, Oct. 7, 2009. Redesignated and amended at 75 FR 17039, 17040, Apr. 5, 2010; 81 FR 76296, Nov. 2, 2016]

§ 1261.3

General provisions.

(a)

Board size and composition.

(b)

Term of directorships.

(c)

Annual elections.

(d)

Location of members.

(e)

Dates.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51460, Oct. 7, 2009. Redesignated at 75 FR 17039, Apr. 5, 2010; 81 FR 76296, Nov. 2, 2016]

§ 1261.4

Designation of member directorships.

(a)

Capital stock reports.

(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.

(c)

Allocation of directorships.

(d)

Notification.

(e)

Change of state.

[74 FR 51460, Oct. 7, 2009. Redesignated and amended at 75 FR 17039, 17040, Apr. 5, 2010; 81 FR 76296, Nov. 2, 2016]

§ 1261.5

Director eligibility.

(a)

Eligibility requirements for member directors.

(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

(b)

State designation for member directors.

(c)

Eligibility requirements for independent directors.

(1) A citizen of the United States; and

(2) A bona fide resident of the district in which the Bank is located.

(d)

Restrictions.

(i) Is an incumbent director, unless:

(A) The incumbent director's term of office would expire before the new term of office would begin; and

(B) The new term of office would not be barred by the term limit provision of section 7(d) of the Bank Act (12 U.S.C. 1427(d)); or

(ii) Is a former director whose service would 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.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51461, Oct. 7, 2009; 75 FR 17039, 17040, Apr. 5, 2010; 81 FR 76296, Nov. 2, 2016]

§ 1261.6

Determination of member votes.

(a)

In general.

(b)

Number of votes.

(c)

Voting preferences.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51461, Oct. 7, 2009. Redesignated and amended at 75 FR 17039, Apr. 5, 2010; 81 FR 76296, Nov. 2, 2016]

§ 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.

(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.

(d)

Independent directorship nominations.

(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 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.

(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.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51461, Oct. 7, 2009. Redesignated and amended at 75 FR 17039, Apr. 5, 2010; 81 FR 76296, Nov. 2, 2016]

§ 1261.8

Election process.

(a)

Ballots.

(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.

(c)

Lack of member directorship nominees.

(d)

Voting.

(1) Mark on the ballot the name of not more than one of the nominees for

(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.

(f)

Declaring results

For member directorships.

(2)

For independent directorships.

(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.

(4)

Eligibility.

(5)

Record retention.

(g)

Report of election.

(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.

(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.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51462, Oct. 7, 2009. Redesignated and amended at 75 FR 17039, 17040, Apr. 5, 2010; 81 FR 76296, Nov. 2, 2016]

§ 1261.9

Actions affecting director elections.

(a)

Banks.

(b)

Support for nomination or election.

(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.

(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 for a directorship; or

(2) Take any other action to influence the voting with respect to any particular individual.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51463, Oct. 7, 2009; 81 FR 76297, Nov. 2,

2016; 83 FR 39326, Aug. 9, 2018]

§ 1261.10

Independent director conflict of interests.

(a)

Employment interests.

(b)

Holding companies.

(c)

Attribution.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51463, Oct. 7, 2009]

§ 1261.11

Conflict-of-interests policy for Bank directors.

(a)

Adoption of conflict-of-interests policy.

(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.

(c)

Confidential Information.

(d)

Gifts.

(e)

Compensation.

(f)

Definitions.

(1)

Immediate family member

(2)

Financial interest

(3)

Business associate

(i) 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

(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.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51463, Oct. 7, 2009]

§ 1261.12

Reporting requirements for Bank directors.

(a)

Annual reporting.

(b)

Report of noncompliance.

[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.

[74 FR 51464, Oct. 7, 2009, as amended at 81 FR 76297, Nov. 2, 2016]

§ 1261.14

Vacant Bank directorships.

(a)

Filling unexpired terms.

(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.

(c)

Notification.

(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.

[74 FR 51464, Oct. 7, 2009, as amended at 75 FR 17039, Apr. 5, 2010]

§ 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:

State

Number of

elective

directorships on

December 31, 1960

California

3

Colorado

2

Illinois

4

Indiana

5

Kansas

3

Kentucky

2

Louisiana

2

Massachusetts

3

Michigan

3

New Jersey

4

New York

4

Ohio

4

Oklahoma

2

Pennsylvania

6

Tennessee

2

Texas

3

Wisconsin

4

[81 FR 76297, Nov. 2, 2016]

§ 1261.16

[Reserved]

Subpart CFederal Home Loan Bank Directors' Compensation and Expenses

Source:

75 FR 17040, Apr. 5, 2010, unless otherwise noted.

§ 1261.20

Definitions.

As used in this subpart C:

Compensation

Expenses

§ 1261.21

General.

(a)

Standard.

(b)

Reporting

Following calendar year.

(2)

Preceding calendar year.

(i) The total compensation paid to each director;

(ii) The total expenses paid to each director;

(iii) The total compensation paid to all directors;

(iv) The total expenses paid to all directors;

(v) The total of all expenses incurred at group functions that are not reimbursed to individual directors, such as the cost of group meals in connection with board and committee meetings;

(vi) The total number of meetings held by the board and its designated committees; and

(vii) The number of board and designated committee meetings each director attended in-person or through electronic means such as video or teleconferencing.

§ 1261.22

Directors' compensation policy.

(a)

General.

(b)

Minimum contents.

(c)

Prohibited payments.

(d)

Submission requirements.

§ 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

1263.8

Subject to inspection and regulation requirement.

1263.9

Makes long-term home mortgage loans requirement.

1263.10

Ten percent requirement for certain insured depository institution applicants.

1263.11

Financial condition requirement for depository institutions and CDFI credit unions.

1263.12

Character of management requirement.

1263.13

Home financing policy requirement.

1263.14

De novo insured depository institution applicants.

1263.15

Recently consolidated applicants.

1263.16

Financial condition requirement for insurance company and certain CDFI applicants.

1263.17

Rebuttable presumptions.

1263.18

Determination of appropriate Bank district for membership.

1263.19

Non-federally-insured credit unions.

Subpart DStock Requirements

1263.20

Official membership insignia.

Authority:

12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

Source:

81 FR 3277, Jan. 20, 2016, unless otherwise noted.

Subpart ADefinitions

§ 1263.1

Definitions.

For purposes of this part:

Adjusted net income

Affiliate

(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

Allowance for loan and lease losses

Appropriate regulator

(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

CDFI credit union

CDFI Fund

CFI asset cap

Class A stock

Class B stock

Combination business or farm property

Community development financial institution

CDFI

et seq.

et seq.

Community financial institution or CFI

(1) The deposits of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811

et seq.

(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

Consolidation

CRA

et seq.

CRA performance evaluation

De novo insured depository institution

Dwelling unit

Enforcement action

Federal share insurance

et seq.

Funded residential construction loan

Gross revenues

Home mortgage loan

(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

Insured depository institution

(1) An insured depository institution as defined in section 2(9) of the Bank Act, as amended (12 U.S.C. 1422(9)); and

(2) To the extent provided under § 1263.19, a non-federally-insured credit union.

Long-term

Manufactured housing

Multifamily property

(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

Non-federally-insured credit union

Nonperforming loans and leases

(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

One-to-four family property

(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

Other real estate owned

i.e.,

Regulatory examination report

Regulatory financial report

Residential mortgage loan

(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

Restricted assets

Total assets

Unrestricted cash and cash equivalents

[81 FR 3277, Jan. 20, 2016, as amended at 82 FR 25722, June 5, 2017]

Subpart BMembership Application Process

§ 1263.2

Membership application requirements.

(a)

Application.

(1)

Applicant review.

(2)

Duty to supplement.

(b)

Digest.

(c)

File.

(1)

Digest.

(2)

Required documents.

(3)

Additional documents.

(4)

Decision resolution.

[81 FR 3277, Jan. 20, 2016, as amended at 82 FR 25722, June 5, 2017]

§ 1263.3

Decision on application.

(a)

Authority.

(b)

Decision resolution.

(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.

[81 FR 3277, Jan. 20, 2016, as amended at 82 FR 25722, June 5, 2017]

§ 1263.4

Automatic membership.

(a)

Automatic membership for certain charter conversions.

(b)

Automatic membership for transfers.

(c)

Automatic membership, in the Bank's discretion, for certain consolidations.

(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.

Filing procedure.

(2)

Documents.

(i)

Bank's decision resolution.

(ii)

Basis for appeal.

(b)

Record for appeal.

Copy of membership file.

(2)

Additional information.

(c)

Deciding appeals.

Subpart CEligibility Requirements

§ 1263.6

General eligibility requirements.

(a)

Requirements.

(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; and

(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.

(c)

Additional eligibility requirement for applicants that are not insured depository institutions.

(d)

Ineligibility.

(e)

Treatment of captives previously admitted to membership.

(1)

Captives admitted prior to September 12, 2014.

(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 the Bank may allow the captive to repay any outstanding advance made or last renewed in accordance with the applicable requirements then in effect and having a maturity date later than its date of termination in accordance with its terms and delay the repurchase of any Bank stock held in support of that advance until after the advance has been repaid, in accordance with the Bank's capital plan.

(2)

Captives admitted on or after September 12, 2014.

(ii) A Bank shall terminate the membership of any captive described in paragraph (e)(2)(i) of this section no later than February 19, 2017, as provided under § 1263.27. Upon 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

§ 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.

(1)

Regulatory financial reports.

(2)

Financial statement.

(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.

(4)

Enforcement actions.

(5)

Additional information.

(b)

Standards.

(1)

Recent composite regulatory examination rating.

(2)

Capital requirement.

(3)

Minimum performance standard

(A)

Earnings.

(B)

Nonperforming assets.

(C)

Allowance for loan and lease losses.

(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) An applicant that is a CDFI credit union or a non-federally-insured credit union must meet the performance trend criteria in paragraph (b)(3)(i) of this section irrespective of its composite regulatory examination rating.

(c)

Eligible collateral not considered.

[81 FR 3277, Jan. 20, 2016, as amended at 82 FR 25722, June 5, 2017]

§ 1263.12

Character of management requirement.

(a)

General.

(1)

Enforcement actions.

(2)

Criminal, civil or administrative proceedings.

(3)

Criminal, civil or administrative monetary liabilities, lawsuits or judgments.

(b)

CDFIs other than CDFI credit unions.

(1)

Criminal, civil or administrative proceedings.

(2)

Criminal, civil or administrative monetary liabilities, lawsuits or judgments.

§ 1263.13

Home financing policy requirement.

(a)

Standard.

(b)

Written justification required.

§ 1263.14

De novo insured depository institution applicants.

(a)

Presumptive compliance.

(b)

Makes long-term home mortgage loans requirement.

(c)

10 percent requirement.

Conditional approval.

(2)

Approval may become final.

(3)

Approval may become void.

(d)

Home financing policy requirement.

Conditional approval.

(2)

Approval may become final.

(3)

Approval may become void.

(e)

Other rules.

§ 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.

(1) All regulatory financial reports that the applicant has filed as a consolidated entity; and

(2)

Pro forma

(b)

Home financing policy requirement.

(c)

Makes long-term home mortgage loans requirement; 10 percent requirement.

pro forma

§ 1263.16

Financial condition requirement for insurance company and certain CDFI applicants.

(a)

Insurance companies.

(i) Based on the information contained in the applicant's most recent regulatory financial report filed with

(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.

Review requirement.

(i)

Financial statements.

(ii)

CDFI Fund certification.

(iii)

Additional information.

(2)

Standards.

(i)

Net asset ratio.

(ii)

Earnings.

(iii)

Loan loss reserves.

(iv)

Liquidity.

§ 1263.17

Rebuttable presumptions.

(a)

Rebutting presumptive compliance.

(b)

Rebutting presumptive noncompliance.

(c)

Presumptive noncompliance by insurance company applicant with subject to inspection and regulation requirement of § 1263.8.

(d)

Presumptive noncompliance with financial condition requirements of §§ 1263.11 and 1263.16

Applicants subject to § 1263.11.

(2)

Applicants subject to § 1263.16.

(e)

Presumptive noncompliance with character of management requirement of § 1263.12

Enforcement actions.

(i)

Regulator confirmation.

(ii)

Written analysis.

(2)

Criminal, civil or administrative proceedings.

(i)

Regulator confirmation.

(ii)

Written analysis.

(3)

Criminal, civil or administrative monetary liabilities, lawsuits or judgments.

(i)

Regulator confirmation.

(ii)

Written analysis.

(f)

Presumptive noncompliance with home financing policy requirements of §§ 1263.13 and 1263.14(d).

(1)

Regulator confirmation.

(2)

Written analysis.

§ 1263.18

Determination of appropriate Bank district for membership.

(a)

Eligibility.

(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.

(c)

Designation of principal place of business

(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.

(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.

(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.

(f)

Insurance companies and CDFIs.

(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,

(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.

§ 1263.19

Non-federally-insured credit unions.

(a)

Applicants.

(1)

Notice.

(2)

Request to regulator.

(3)

Completion of application.

(i) A written statement from the applicant's appropriate State regulator that the applicant met all of the eligibility requirements for Federal share insurance as of the date of the request sent pursuant to paragraph (a)(2) of this section;

(ii) A written statement from the applicant's appropriate State regulator that it cannot or will not make a determination regarding the applicant's eligibility for Federal share insurance; or

(iii) A written statement from the applicant, prepared no earlier than the end of the six-month period beginning on the date of the request sent pursuant to paragraph (a)(2) of this section, certifying that the applicant did not receive from its appropriate State regulator within that six-month period either a

response as described in paragraph (a)(3)(i) or (ii) of this section or a response stating that the applicant did not meet all of the eligibility requirements for Federal share insurance as of the date of the request sent pursuant to paragraph (a)(2) of this section.

(b)

Members canceling Federal share insurance.

[82 FR 25723, June 5, 2017]

Subpart DStock Requirements

§ 1263.20

Stock purchase.

(a)

Minimum purchase requirement.

(b)

Issuance of stock.

(c)

Reports.

§ 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.

(b)

Restriction.

Subpart EWithdrawal, Termination and Readmission

§ 1263.24

Consolidations involving members.

(a)

Consolidation of members.

(b)

Consolidation into nonmember

In general.

(2)

Notification.

(3)

Application.

(4)

Outstanding indebtedness.

(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.

(6)

Disapproval of membership.

(c)

Dividends on acquired Bank stock.

§ 1263.25

[Reserved]

§ 1263.26

Voluntary withdrawal from membership.

(a)

In general

(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.

(c)

Stock redemption periods.

§ 1263.27

Involuntary termination of membership.

(a)

Grounds.

(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.

(c)

Membership rights.

§ 1263.28

[Reserved]

§ 1263.29

Disposition of claims.

(a)

In general.

(b)

Bank stock.

§ 1263.30

Readmission to membership.

(a)

In general.

(b)

Exceptions.

Subpart FOther Membership Provisions

§ 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, or by any private entity providing share insurance to a member that is a non-federally-insured credit union or a

CDFI credit union, may be furnished by such authorities or entities 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) To the extent applicable, agrees to provide to the Bank, within 20 days of filing, copies of reports of condition and operations required to be filed with:

(1) The member's appropriate Federal banking agency;

(2) The member's appropriate State regulator; or

(3) Any private entity providing share insurance to a member that is a non-federally-insured credit union or a CDFI credit union.

[81 FR 3277, Jan. 20, 2016, as amended at 82 FR 25723, June 5, 2017]

§ 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.

Pt. 1264

PART 1264FEDERAL HOME LOAN BANK HOUSING ASSOCIATES

Sec.

Authority:

12 U.S.C. 1430b, 4511, 4513 and 4526.

Source:

65 FR 44426, July 18, 2000, unless otherwise noted. Redesignated at 75 FR 8240, Feb. 24, 2010.

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

State housing finance agency

SHFA

(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,

[65 FR 44426, July 18, 2000, as amended at 67 FR 12849, Mar. 20, 2002; 75 FR 8240, Feb. 24,

2010; 78 FR 2324, Jan. 11, 2013]

§ 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.

[65 FR 44426, July 18, 2000, as amended at 75 FR 8240, Feb. 24, 2010; 81 FR 76297, Nov. 2, 2016]

§ 1264.3

Housing associate eligibility requirements.

(a)

General.

(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.

[65 FR 44426, July 18, 2000, as amended at 75 FR 8240, Feb. 24, 2010; 75 FR 76622, Dec. 9, 2010]

§ 1264.4

Satisfaction of eligibility requirements.

(a)

HUD approval requirement.

(b)

Charter requirement.

(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.

(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

(d)

Mortgage activity requirement.

(e)

Financial condition requirement.

[65 FR 44426, July 18, 2000, as amended at 67 FR 12849, Mar. 20, 2002; 70 FR 9510, Feb. 28, 2005; 75 FR 8240, Feb. 24, 2010]

§ 1264.5

Housing associate application process.

(a)

Authority.

(b)

Application requirements.

(c)

Bank decision process

Action on applications.

(2)

Decision on applications.

(3)

File.

[65 FR 44426, July 18, 2000, as amended at 70 FR 9510, Feb. 28, 2005; 75 FR 8240, Feb. 24, 2010]

§ 1264.6

Appeals.

(a)

General.

(b)

Record for appeal.

(c)

Deciding appeals.

[65 FR 44426, July 18, 2000, as amended at 70 FR 9510, Feb. 28, 2005; 75 FR 8240, Feb. 24, 2010; 80 FR 80233, Dec. 24, 2015]

Pt. 1265

PART 1265CORE MISSION ACTIVITIES

Sec.

1265.1

Definitions.

1265.2

Mission of the Banks.

1265.3

Core mission activities.

Authority:

12 U.S.C. 1430, 1430b, 1431, 4511, 4513 and 4526.

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

(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

Targeted income level

(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.

[75 FR 8240, Feb. 24, 2010, as amended at 78 FR 2324, Jan. 11, 2013]

§ 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

(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, ore 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. 681

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]

Pt. 1266

PART 1266ADVANCES

Subpart AAdvances to Members

Sec.

Authority:

12 U.S.C. 1426, 1429, 1430, 1430b, 1431, 4511(b), 4513, 4526(a).

Source:

58 FR 29469, May 20, 1993, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000, and 75 FR 76622, Dec. 9, 2010.

Editorial Note:

Nomenclature changes to part 1266 appear at 75 FR 76622, Dec. 9, 2010.

Subpart AAdvances to Members

§ 1266.1

Definitions.

As used in this part:

Advance

(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 this part.

Affiliate

Capital deficient member

Cash equivalents

(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

(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

Community development loan

(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

Depository institution

Dwelling unit

Improved residential real property

Insurer

Long-term advance

Manufactured housing

Mortgage-backed security

(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

(1)(i) Real property that is solely residential and which includes five or more dwelling units; or

(ii) Real property which includes five or more dwelling units with commercial 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

One-to-four family property

(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 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 containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

Residential housing finance assets

(1) Loans secured by residential real property;

(2) Mortgage-backed securities;

(3) Participations in loans secured by residential real property;

(4) Loans or investments providing financing for economic development projects for targeted beneficiaries;

(5) Loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property;

(6) Any loans or investments which FHFA, in its discretion, otherwise determines to be residential housing finance assets; and

(7) For CFI members, and to the extent not already included in categories (1) through (6), small business loans, small farm loans, small agri-business loans, or community development loans.

Residential real property

(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

Small agri-business loans

Small business loans

Small farm loans

State housing finance agency

SHFA

State regulator

Tangible capital

(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

[58 FR 29469, May 20, 1993, as amended at 58 FR 29477, May 20, 1993; 59 FR 2949, Jan. 20, 1994; 62 FR 8871, Feb. 27, 1997; 62 FR 12079, Mar. 14, 1997; 63 FR 35128, June 29, 1998; 63 FR 65545, Nov. 27, 1998; 64 FR 16621, Apr. 6, 1999; 65 FR 8262, Feb. 18, 2000; 65 FR 44428, July 18, 2000; 66 FR 50295, Oct. 3, 2001; 67 FR 12850, Mar. 20, 2002; 75 FR 76622, Dec. 9, 2010; 78 FR 2324, Jan. 11, 2013; 81 FR 76297, Nov. 2, 2016]

§ 1266.2

Authorization and application for advances; obligation to repay advances.

(a)

Application for advances.

(b)

Obligation to repay advances.

(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.

(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.

(e)

Status of secured lending.

[58 FR 29469, May 20, 1993, as amended at 64 FR 71278, Dec. 21, 1999; 65 FR 8262, Feb. 18, 2000. Redesignated at 65 FR 44429, July 18, 2000; 67 FR 12851, Mar. 20, 2002; 75 FR 76623, Dec. 9, 2010]

§ 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 existing residential housing finance assets.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, financial statement or other reliable documentation made available by the member.

(2) Applications for CICA advances are exempt from the requirements of paragraph (b)(1) of this

section.

[75 FR 76623, Dec. 9, 2010]

§ 1266.4

Limitations on access to advances.

(a)

Credit underwriting.

(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; or

(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.

(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

Renewal for 30-day terms.

(2)

Renewal for longer than 30-day terms.

(d)

Advances to capital deficient but solvent members.

(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

(e)

Reporting.

(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.

(g)

Advance commitments.

(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.

[58 FR 29469, May 20, 1993, as amended at 59 FR 2949, Jan. 20, 1994; 64 FR 71278, Dec. 21, 1999; 65 FR 8263, Feb. 18, 2000. Redesignated at 65 FR 44429, July 18, 2000, as amended at 67 FR 12851, Mar. 20, 2002; 71 FR 35500, June 21, 2006]

§ 1266.5

Terms and conditions for advances.

(a)

Advance maturities.

(b)

Advance pricing

General.

(i) The marginal cost to the Bank of raising matching term and maturity funds in the marketplace, including embedded options; and

(ii) The administrative and operating costs associated with making such advances to members.

(2)

Differential pricing.

(A) The credit and other risks to the Bank of lending to any particular member; or

(B) Other reasonable criteria that may be applied equally to all members.

(ii) Each Bank shall include in its member products policy required by § 917.4 of this title, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3)

Exceptions.

(i) A Bank's CICA programs; and

(ii) Any other advances programs that are volume limited and specifically approved by the Bank's board of directors.

(c)

Authorization for pricing advances.

(2) A Bank president authorized to set interest rates on advances pursuant to this paragraph (c) may delegate any part of such authority to any officer or employee of the Bank.

(d)

Putable or convertible advances

Disclosure.

(2)

Replacement funding for putable advances.

(3)

Definition.

putable advance

[58 FR 29469, May 20, 1993, as amended at 61 FR 52687, Oct. 8, 1996; 65 FR 8263, Feb. 18, 2000. Redesignated and amended at 65 FR 44429, July 18, 2000]

§ 1266.6

Fees.

(a)

Fees in member products policy.

(b)

Prepayment fees.

(2) Prepayment fees are not required for:

(i) Advances with original terms to maturity or repricing periods of six months or less;

(ii) Advances funded by callable debt; or

(iii) Advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment.

(3) The board of directors of each Bank, a designated committee thereof, or officers specifically authorized by the board of directors, may waive a prepayment fee only if such prepayment will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors.

(4) A Bank, in determining whether or not to waive a prepayment fee, shall apply consistent standards to all of its members.

(c)

Commitment fees.

(d)

Other fees.

[58 FR 29469, May 20, 1993; 65 FR 8263, Feb. 18, 2000. Redesignated and amended at 65 FR 44429, July 18, 2000]

§ 1266.7

Collateral.

(a)

Eligible security for advances to all members.

(1)

Mortgage loans and privately issued securities.

(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.

(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

(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.

(4)

Other real estate-related collateral.

(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.

(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

General.

(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.

(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.

(d)

Additional advances collateral.

(e)

Bank stock as collateral.

(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

(f)

Advances collateral security requiring formal approval.

(g)

Pledge of advances collateral by affiliates.

(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.

[58 FR 29469, May 20, 1993, as amended at 64 FR 16621, Apr. 6, 1999; 65 FR 8262, Feb. 18, 2000. Redesignated and amended at 65 FR 44429, July 18, 2000; 67 FR 12851, Mar. 20, 2002; 75 FR 76623, Dec. 9, 2010]

§ 1266.8

Banks as secured creditors.

(a) Except as provided in paragraph (b) of this section, notwithstanding any other provision of law, any security interest granted to a Bank by a member, or by an affiliate of a member, shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee or similar party having rights of a lien creditor, to such collateral.

(b) A Bank's security interest as described in paragraph (a) of this section shall not be entitled to priority over the claims and rights of a party that:

(1) Would be entitled to priority under otherwise applicable law; and

(2) Is an actual bona fide purchaser for value of such collateral or is an actual secured party whose security interest in such collateral is perfected in accordance with applicable state law.

[58 FR 29469, May 20, 1993. Redesignated at 65 FR 8256, Feb. 18, 2000 and further redesignated at 65 FR 44429, July 18, 2000, as amended at 67 FR 12851, Mar. 20, 2002]

§ 1266.9

Pledged collateral; verification.

(a)

Collateral safekeeping.

(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.

[58 FR 29469, May 20, 1993, as amended at 64 FR 16621, Apr. 6, 1999; 65 FR 8263, Feb. 18, 2000. Redesignated at 65 FR 44430, July 18, 2000; 67 FR 12851, Mar. 20, 2002]

§ 1266.10

Collateral valuation; appraisals.

(a)

Collateral valuation.

(b)

Fair application of procedures.

(c)

Appraisals.

[65 FR 44430, July 18, 2000, as amended at 81 FR 76297, Nov. 2, 2016]

§ 1266.11

[Reserved]

§ 1266.12

Intradistrict transfer of advances.

(a)

Advances held by members.

(b)

Advances held by nonmembers.

[59 FR 2950, Jan. 20, 1994. Redesignated at 65 FR 44430, July 18, 2000]

§ 1266.13

Special advances to savings associations.

(a)

Eligible institutions.

(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.

(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.

[58 FR 29469, May 20, 1993. Redesignated at 65 FR 8256, Feb. 18, 2000 and further redesignated at 65 FR 44430, July 18, 2000; 81 FR 76298, Nov. 2, 2016]

§ 1266.14

Advances to the Savings Association Insurance Fund.

(a)

Authority.

(b)

Requirements.

(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.

[58 FR 29469, May 20, 1993, as amended at 65 FR 8262, Feb. 18, 2000. Redesignated at 65 FR 44430, July 18, 2000]

§ 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

[58 FR 29469, May 20, 1993. Redesignated at 65 FR 8256, Feb. 18, 2000 and further redesignated at 65 FR 44430, July 18, 2000]

Subpart BAdvances to Housing Associates

Source:

62 FR 12079, Mar. 14, 1997, unless otherwise noted.

§ 1266.16

Scope.

Except as otherwise provided in §§ 1266.14 and 1266.17, the requirements of subpart A apply to this subpart.

[58 FR 29469, May 20, 1993. Redesignated at 65 FR 44430, July 18, 2000]

§ 1266.17

Advances to housing associates.

(a)

Authority.

(b)

Collateral requirements

Advances to housing associates.

(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.

(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

General.

(2)

Advance pricing.

(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.

(d)

Transaction accounts.

(e)

Loss of eligibility

Notification of status changes.

(2)

Verification of eligibility.

(3)

Loss of eligibility.

[58 FR 29469, May 20, 1993, as amended at 65 FR 203, Jan. 4, 2000; 65 FR 8263, Feb. 18, 2000. Redesignated and amended at 65 FR 44430, July 18, 2000; 67 FR 12851, Mar. 20, 2002; 70 FR 9510, Feb. 28, 2005; 81 FR 76298, Nov. 2, 2016]

Pt. 1267

PART 1267FEDERAL HOME LOAN BANK INVESTMENTS

Sec.

Authority:

12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

Source:

76 FR 29151, May 20, 2011, unless otherwise noted.

§ 1267.1

Definitions.

As used in this part:

Asset-backed security

Deposits in banks or trust companies

(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.

Derivative contract

Indexed principal swap

Interest-only stripped security

Investment quality

(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

Mortgage-backed security

Principal-only stripped security

Total capital

[76 FR 29151, May 20, 2011, as amended at 78 FR 2324, Jan. 11, 2013; 78 FR 67008, Nov. 8, 2013; 81 FR 76298, Nov. 2, 2016]

§ 1267.2

Authorized investments and transactions.

(a) In addition to assets enumerated in parts 1266 and 1268 of this chapter 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; and

(6) Instruments that the Bank has determined are permissible investments for fiduciary or trust funds under the laws of the state in which the Bank is located.

(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.

[76 FR 29151, May 20, 2011, as amended at 81 FR 91688, Dec. 19, 2016]

§ 1267.3

Prohibited investments and prudential rules.

(a)

Prohibited investments.

(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)).

(5) Residual interest and interest accrual classes of securities;

(6) Interest-only and principal-only stripped securities; and

(7) Fixed rate mortgage-backed securities or eligible asset-backed securities or floating rate mortgage-backed securities or eligible asset-backed securities that on the trade date are at rates equal to their contractual cap, with average lives that vary more than six years under an assumed instantaneous interest rate change of 300 basis points, unless the instrument qualifies as an acquired member asset under part 955 of this title.

(b)

Foreign currency or commodity positions prohibited.

(c)

Limits on certain investments.

(2) A Bank's purchase of any mortgage-backed or asset-backed security may not cause the value of its total holdings of mortgage-backed and asset-backed securities, measured as of the transaction trade date for such purchase, to increase in any calendar quarter by more than 50 percent of its total capital as of the beginning of such quarter.

(3) For purposes of applying the limits under this paragraph (c), the value of relevant mortgage-backed or asset-backed securities shall be calculated based on amortized historical costs for securities classified as held-to-maturity or available-for-sale and on fair value for trading securities.

[76 FR 29151, May 20, 2011, as amended at 79 FR 67009, Nov. 8, 2013]

§ 1267.4

Limitations and prudential requirements on use of derivative instruments.

(a)

Non-speculative use.

(b)

Additional Prohibitions.

(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.

(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

(iv) A requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

Pt. 1268

PART 1268ACQUIRED MEMBER ASSETS

Sec.

1268.8

Administrative transactions and agreements between Banks.

Authority:

12 U.S.C. 1430, 1430b, 1431, 4511, 4513, 4526.

Source:

81 FR 91688, Dec. 19, 2016, unless otherwise noted.

§ 1268.1

Definitions.

As used in this part:

Affiliate

AMA investment grade

AMA product

AMA program

Expected losses

Participating financial institution

Pool

Qualified insurer

Residential real property

§ 1268.2

Authorization for acquired member assets.

(a)

General.

(b)

Grandfathered transactions.

§ 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)(ii), (a)(4), or (b)(1) of this chapter, 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.

(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.

(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.

(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.

(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.

(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; and

(B) Such insurance is positioned in the credit enhancement 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;

(iii) Purchasing pool-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.

(e)

Qualified insurers.

(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.

§ 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.

(b)

Termination of agreements.

(c)

Delegation of pricing authority.

Pt. 1269

PART 1269STANDBY LETTERS OF CREDIT

Sec.

1269.1

Definitions.

1269.2

Standby letters of credit on behalf of members.

1269.3

Standby letters of credit on behalf of housing associates.

1269.4

Obligation to Bank under all standby letters of credit.

1269.5

Additional provisions applying to all standby letters of credit.

Authority:

12 U.S.C. 1429, 1430, 1430b, 1431, 4511, 4513 and 4526.

Source:

63 FR 65699, Nov. 30, 1998, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000, and further redesignated at 67

§ 1269.1

Definitions.

As used in this part:

Applicant

Beneficiary

Community lending

Confirm

Document

Issuer

Presentation

Residential housing finance

(1) The purchase or funding of residential housing finance assets, as that term is defined in § 1266.1 of this chapter; or

(2) Other activities that support the development or construction of residential housing.

SHFA associate

Standby letter of credit

standby letter of credit

[63 FR 65699, Nov. 30, 1998, as amended at 65 FR 8265, Feb. 18, 2000; 65 FR 44431, July 18, 2000. Redesignated and amended at 67 FR 12853, Mar. 20, 2002; 75 FR 8240, Feb. 24, 2010; 75 FR 76623, Dec. 9, 2010; 78 FR 2324, Jan. 11, 2013; 78 FR 67009, Nov. 8, 2013]

§ 1269.2

Standby letters of credit on behalf of members.

(a)

Authority and 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.

(c)

Eligible collateral.

(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

[63 FR 65699, Nov. 30, 1998, as amended at 65 FR 8265, Feb. 18, 2000; 65 FR 44431, July 18, 2000. Redesignated and amended at 67 FR 12853, Mar. 20, 2002; 75 FR 8240, Feb. 24, 2010; 75 FR 76623, Dec. 9, 2010; 78 FR 67009, Nov. 8, 2013]

§ 1269.3

Standby letters of credit on behalf of housing associates.

(a)

Housing associates.

(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.

[63 FR 65699, Nov. 30, 1998, as amended at 65 FR 8265, Feb. 18, 2000; 65 FR 44431, July 18, 2000; 75 FR 8240, Feb. 24, 2010; 75 FR 76623, Dec. 9, 2010]

§ 1269.4

Obligation to Bank under all standby letters of credit.

(a)

Obligation to reimburse.

(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.

(c)

Obligation financed by advance.

[63 FR 65699, Nov. 30, 1998, as amended at 65 FR 8265, Feb. 18, 2000; 65 FR 44431, July 18, 2000. Redesignated and amended at 67 FR 12853, Mar. 20, 2002; 75 FR 8240, Feb. 24, 2010; 75 FR 76623, Dec. 9, 2010; 78 FR 2324, Jan. 11, 2013; 81 FR 76298, Nov. 2, 2016]

§ 1269.5

Additional provisions applying to all standby letters of credit.

(a)

Requirements.

(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.

(2) Collateral pledged by a member or housing associate to secure a letter of

[63 FR 65699, Nov. 30, 1998, as amended at 65 FR 8265, Feb. 18, 2000; 65 FR 44431, July 18, 2000. Redesignated and amended at 67 FR 12853, Mar. 20, 2002; 75 FR 8240, Feb. 24, 2010]

Pt. 1270

PART 1270LIABILITIES

Subpart ADefinitions

Sec.

Additional requirements; notice of attachment for Book-entry consolidated obligations.

1270.19

Reference to certain Department of Treasury commentary and determinations.

1270.20

Consolidated obligations are not obligations of the United States or guaranteed by the United States.

Authority:

12 U.S.C. 1431, 1432, 1435, 4511, 4512, 4513, and 4526.

Source:

76 FR 18369, Apr. 4, 2011, unless otherwise noted.

Subpart ADefinitions

§ 1270.1

Definitions.

As used in this part, unless the context otherwise requires or indicates:

Adverse Claim

Book-entry consolidated obligation

Consolidated obligation

Deposits in banks or trust companies

(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.

Entitlement Holder

Federal Reserve Bank

Federal Reserve Bank Operating Circular

Federal Reserve Board

Funds account

Non-complying Bank

Office of Finance

Participant

Participant's Securities Account

Person

Repurchase agreement

Revised Article 8

SBIC

Securities Intermediary

(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

Transfer Message

[76 FR 18369, Apr. 4, 2011, as amended at 78 FR 2324, Jan. 11, 2013; 78 FR 67009, Nov. 8, 2013]

Subpart BSources of Funds

§ 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.

Subpart CConsolidated Obligations

§ 1270.4

Issuance of consolidated obligations.

(a)

Consolidated obligations issued by the Banks

(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.

pro rata

(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

[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

(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

(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; or

(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

(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 inter-Bank assistance agreement, or ordered another remedy, and all of the non-complying Bank's direct obligations have been paid.

(d)

FHFA payment orders; Obligation to reimburse

(2) 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

(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.,

(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

(f)

Reservation of authority.

(g)

No rights created

(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 DBook-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

(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 the first sentence of paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 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 a 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 in all respects 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 thereof 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

(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.

(b)

Notice of attachment.

§ 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

§ 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.

Pt. 1271

PART 1271MISCELLANEOUS FEDERAL HOME LOAN BANK OPERATIONS AND AUTHORITIES

Subpart ACollection, Settlement, and Processing of Payment Instruments

Sec.

Subpart BMiscellaneous Bank Authorities

Subpart CBank Requests for Information

Budget and expenses.

1271.36

Administrative expenses.

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Non-administrative expenses; assessments.

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Reports to FHFA.

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Review of books and records.

Subpart EAuthority for Bank Assistance of the Resolution Funding Corporation

1271.41

Bank employees.

Authority:

12 U.S.C. 1430, 1431, 1432, 1441(b)(8), (c), (j), 1442, 4511(b), 4513(a), 4526.

Source:

78 FR 2324, Jan. 11, 2013, unless otherwise noted.

Subpart ACollection, Settlement, and Processing of Payment Instruments

§ 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

Assets

Data communication

Data processing

Eligible institution

Issuance of forms

Presentment

Statement packaging

Storage services

Transportation of items

§ 1271.2

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.

§ 1271.3

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 of payment 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.

§ 1271.4

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.

§ 1271.5

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

§ 1271.6

Pricing of services.

(a)

General.

(b)

Payment instrument account 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.

(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

§ 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.

Subpart BMiscellaneous Bank Authorities

§ 1271.10

Transfer of funds between Banks.

Inter-Bank borrowing shall be through unsecured deposits bearing interest at rates negotiated between Banks.

§ 1271.11

Trustee powers.

A Bank may act, and make reasonable charges for doing so, as trustee of any trust affecting the business of any member or any institution or group applying for membership, if:

(a) Such trust is created or arises for the benefit of the institution or its depositors, investors, or borrowers, or for the promotion of sound and economical home financing; and

(b) In the case of applicants, the Bank ceases to act as trustee if the application is withdrawn or rejected.

Subpart CBank Requests for Information

§ 1271.15

Definitions.

As used in this subpart:

Confidential regulatory information

Financial regulatory agency

(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

(1) A Bank in possession of any particular confidential regulatory information; or

(2) The financial regulatory agency that supplied the particular confidential regulatory information to such Bank.

§ 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.

(b)

Subpoena.

(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.

(c)

Nondisclosure to third parties.

(d)

Disclosure to FHFA.

(2) FHFA shall keep all confidential regulatory information received under this paragraph (d) in strict confidence.

§ 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 DFinancing Corporation Operations

§ 1271.30

Definitions.

As used in this subpart:

Administrative expenses.

(2) Do not include any form of employee compensation, custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

Custodian fees

Directorate

Insured depository institution

Issuance costs

Non-administrative expenses

Obligations

Receivership proceeds

§ 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.

(b)

Procedure.

§ 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.

(b)

FHFA approval.

(c)

Spending limitation.

(d)

Amended budgets.

§ 1271.36

Administrative expenses.

(a)

Payment by Banks.

(b)

Amount.

(c)

Adjustments.

§ 1271.37

Non-administrative expenses; assessments.

(a)

Interest expenses.

(b)

Assessments on insured depository institutions

Authority.

(2)

Assessment rate

Determination.

(ii)

Notice.

(3)

Collecting assessments

Collection agent.

(ii)

Accounts.

(c)

Receivership proceeds

Authority.

(2)

Procedure.

(d)(1)

Final assessments.

(2)

Amendments to call reports.

(3)

June 2019 assessment.

[78 FR 2324, Jan. 11, 2013, as amended at 83 FR 63058, Dec. 7, 2018]

§ 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 EAuthority 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)).

Pt. 1272

PART 1272NEW BUSINESS ACTIVITIES

Sec.

Authority:

12 U.S.C. 1431(a), 1432(a), 4511(b), 4513, 4526(a).

Source:

81 FR 91694, Dec. 19, 2016, unless otherwise noted.

§ 1272.1

Definitions.

As used in this part:

Business Day

NBA Notice Date

New business activity (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. If FHFA fails to take any of those actions by the 30th business day following the NBA Notice Date, the NBA notice shall be deemed to have been approved and the Bank may commence the activity for which the notice was submitted.

(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. If FHFA fails to approve or deny a NBA notice by that date, and the Director has not extended the review period, the NBA notice shall be deemed to have been approved and the Bank may commence the activity for which the notice was submitted.

(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 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.

Pt. 1273

PART 1273OFFICE OF FINANCE

Sec.

1273.9

Audit Committee.

Appendix A to Part 1273Exceptions to the General Disclosure Standards

Authority:

12 U.S.C. 1431, 1440, 4511(b), 4513, 4514(a), 4526(a).

Source:

75 FR 23161, May 3, 2010, unless otherwise noted.

§ 1273.1

Definitions.

For purposes of this part:

Audit Committee

Chair

Chief Executive Officer

CEO

Independent Director

[75 FR 23161, May 3, 2010, as amended at 78 FR 2328, Jan. 13, 2013; 81 FR 76298, Nov. 2, 2016]

§ 1273.2

Authority of the OF.

(a)

General.

(b)

Agent.

(c)

Assessments.

§ 1273.3

Functions of the OF.

(a)

Joint debt issuance.

(b)

Preparation of combined financial reports.

(c)

Fiscal agent.

(d)

Financing Corporation and Resolution Funding Corporation.

[75 FR 23161, May 3, 2010, as amended at 81 FR 76298, Nov. 2, 2016]

§ 1273.4

FHFA oversight.

(a)

Oversight and enforcement actions.

(b)

Examinations.

(c)

Combined financial reports.

§ 1273.5

Funding of the OF.

(a)

Generally.

(b)

Funding policies.

(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

(c)

Alternative funding method.

(d)

Prompt reimbursement.

(e)

Indemnification expenses.

(f)

Operating funds segregated.

§ 1273.6

Debt management duties of the OF.

(a)

Issuing and servicing of consolidated obligations.

(b)

Combined financial reports 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 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,

(7) Nothing in this section shall create or be deemed to create any rights in any third party.

(c)

Capital markets data.

(d)

NRSROs.

(e)

Research.

(f)

Monitor Banks' credit exposure.

[75 FR 23161, May 3, 2010, as amended at 81 FR 76298, Nov. 2, 2016]

§ 1273.7

Structure of the OF board of directors.

(a)

Membership.

(1) Each of the Bank presidents,

ex officio,

(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.

(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, subject to FHFA's review of, and non-objection to, the new Independent Director. The OF board of directors shall provide FHFA with the same biographic and background information about the new Independent Director required under paragraph (c) of this section, and FHFA shall have the same rights of non-objection to the

(c)

Election of Independent Directors.

(d)

Election of Chair and Vice-Chair.

(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.

(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.

(f)

Compensation.

(2) The OF shall pay reasonable compensation and expenses to the Independent Directors in accordance with the requirements for payment of compensation and expenses to Bank directors as set forth in part 1261 of this chapter.

(g)

Corporate Governance and Indemnification

General.

(2)

Election and designation of body of law.

(A) The law of the jurisdiction in which the principal office of the OF is located;

(B) The Delaware General Corporation Law (Del. Code Ann. Title 8); or

(C) The Revised Model Business Corporation Act.

(ii) The OF board of directors shall designate in its by-laws the body of law elected pursuant to this paragraph (g)(2).

(3)

Indemnification.

(h)

Delegation.

(i)

Outside staff and consultants.

[81 FR 76298, Nov. 2, 2016]

§ 1273.8

General duties of the OF board of directors.

(a)

General.

(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 Banks' 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.

(c)

Duties regarding COs.

(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.

(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 § 1239.14 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.

[75 FR 23161, May 3, 2010, as amended at 81 FR 76299, Nov. 2, 2016; 83 FR 52954, Oct. 19, 2018]

§ 1273.9

Audit Committee.

(a)

Composition.

(b)

Responsibilities.

(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

(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 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.

(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.

[75 FR 23161, May 3, 2010, as amended at 81 FR 76299, Nov. 2, 2016]

Pt. 1273, App. A

Appendix A to Part 1273Exceptions to the General Disclosure Standards

A. Related-party transactions.

B. Biographical information.

C. Compensation.

D. Submission of matters to a vote of stockholders.

E. Exhibits.

F. Per share information.

G. Beneficial ownership.

[75 FR 23161, May 3, 2010, as amended at 81 FR 76299, Nov. 2, 2016]

Pt. 1274

PART 1274FINANCIAL STATEMENTS OF THE BANKS

Sec.

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

Audit report

[75 FR 23166, May 3, 2010, as amended at 78 FR 2328, Jan. 11, 2013; 81 FR 76300, Nov. 2, 2016]

§ 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.

Pt. 1277

PART 1277FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS, CAPITAL STOCK AND CAPITAL PLANS

Subpart ADefinitions

Sec.

1277.1

Definitions.

Authority:

12 U.S.C. 1426, 1436(a), 1440, 1443, 1446, 4511, 4513, 4514, 4526, 4612.

Source:

80 FR 12755, Mar. 11, 2015, unless otherwise noted.

Subpart ADefinitions

§ 1277.1

Definitions.

As used in this part:

Affiliated counterparty

Bankruptcy remote

Class A stock

Class B stock

Collateralized mortgage obligation,

CMO,

Commitment to make an advance or acquire a loan subject to certain drawdown

Credit derivative

Credit risk

Derivatives clearing organization

Derivative contract

Eligible master netting agreement

Exchange rate contracts

Former member

General allowance for losses

Government Sponsored Enterprise,

GSE,

Internal cash-flow model

Internal market-risk model

Market risk

Market value-at-risk

Minimum investment

Non-mortgage asset

Non-rated asset

Operational risk

Permanent capital

Redeem or Redemption

Regulatory capital requirements

Repurchase

Residential mortgage

Residential mortgage asset,

RMA,

Residential mortgage security

Sales of federal funds subject to a continuing contract

Total assets

Total capital

[80 FR 12755, Mar. 11, 2015, as amended at 84 FR 5325, Feb. 20, 2019]

Subpart BBank Capital Requirements

Source:

84 FR 5326, Feb. 20, 2019, unless otherwise noted.

§ 1277.2

Total capital requirement.

Each Bank shall maintain at all times:

(a) Total capital in an amount at least equal to 4.0 percent of the Bank's total assets; and

(b) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets. For purposes of determining this leverage ratio, total capital shall be computed by multiplying the Bank's permanent capital by 1.5 and adding to this product all other components of total capital.

§ 1277.3

Risk-based capital requirement.

Each Bank shall maintain at all times permanent capital in an amount at least equal to the sum of its credit risk capital requirement, its market risk capital requirement, and its operational risk capital requirement, calculated in accordance with §§ 1277.4, 1277.5, and 1277.6, respectively.

§ 1277.4

Credit risk capital requirement.

(a)

General requirement.

(b)

Credit risk capital charge for residential mortgage assets and collateralized mortgage obligations.

(c)

Credit risk capital charge for advances, non-mortgage assets, and non-rated assets.

(d)

Credit risk capital charge for off-balance sheet items.

(e)

Derivative contracts.

(i) The current credit exposure for the derivative contract, calculated in accordance with paragraph (i)(1) of this section, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to Table 2 to this section, provided that a Bank shall use the credit risk percentages from the column for instruments with maturities of one year or less for all such derivative contracts; plus

(ii) The potential future credit exposure for the derivative contract, calculated in accordance with paragraph (i)(2) of this section, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to Table 2 to this section, where a Bank uses the actual remaining maturity of the derivative contract for the purpose of applying Table 2 to this section; plus

(iii) A credit risk capital charge applicable to the undiscounted amount of collateral posted by the Bank with respect to a derivative contract that exceeds the Bank's current payment obligation under that derivative contract, where the charge equals the amount of such excess collateral multiplied by the credit risk percentage requirement assigned under Table 2 to this section for the custodian or other party that holds the collateral, and where a Bank deems the exposure to have a remaining maturity of one year or less when applying Table 2 to this section.

(2)(i) A Bank may reduce the credit risk capital charge calculated under paragraph (e)(1) of this section by the amount of the discounted value of any collateral that is held by or on behalf of the Bank against an exposure from the derivative contract, and that satisfies the requirements of paragraph (e)(3) of this section. If the total amount of the discounted value of the collateral is less than the credit risk capital charge calculated under paragraph (e)(1) of this section for a particular derivative contract, then the credit risk capital charge for the derivative contract shall equal the

amount of the initial charge that remains after having been reduced by the collateral. A Bank that uses a counterparty's pledged collateral to reduce the capital charge against a derivative contract under this provision, shall also apply a capital charge to the amount of the pledged collateral that it has used to reduce its credit exposure on the derivative contract. The amount of that capital charge shall be equal to the capital charge that would be required under paragraph (b) or (c) of this section, whichever applies to the type of collateral, as if the Bank were to own the collateral directly. In reducing the capital charge on a particular derivative contract, the Bank shall apply the discounted value of the collateral for that derivative contract in the following manner:

(A) First, to reduce the current credit exposure of the derivative contract subject to the capital charge; and

(B) Second, and only if the total discounted value of the collateral held exceeds the current credit exposure of the contract, any remaining amounts may be applied to reduce the amount of the potential future credit exposure of the derivative contract subject to the capital charge.

(ii) If a counterparty's payment obligations to a Bank under a derivative contract are unconditionally guaranteed by a third-party, then the credit risk percentage requirement applicable to the derivative contract may be that associated with the guarantor, rather than the Bank's counterparty.

(3) The credit risk capital charge may be reduced as described in paragraph (e)(2)(i) of this section for collateral held against the derivative contract exposure only if the collateral is:

(i) Held by, or has been paid to, the Bank or held by an independent, third-party custodian on behalf of the Bank pursuant to a custody agreement that meets the requirements of § 1221.7(c) and (d) of this chapter;

(ii) Legally available to absorb losses;

(iii) Of a readily determinable value at which it can be liquidated by the Bank; and

(iv) Subject to an appropriate discount to protect against price decline during the holding period and the costs likely to be incurred in the liquidation of the collateral, provided that such discount shall equal at least the minimum discount required under appendix B to part 1221 of this chapter for

collateral listed in that appendix, or shall be estimated by the Bank based on appropriate assumptions about the price risks and liquidation costs for collateral not listed in appendix B to part 1221.

(4) The credit risk capital charge for any derivative contracts entered into between a Bank and its members shall be calculated in accordance with paragraph (e)(1) of this section, except that the Bank shall use the credit risk percentage requirements from Table 1 to this section, which sets forth the credit risk percentage requirements for advances.

(5) Notwithstanding any other provision in this paragraph (e), the credit risk capital charge for:

(i) A foreign exchange rate contract (excluding gold contracts) with an original maturity of 14 calendar days or less shall be zero; and

(ii) A derivative contract cleared by a derivatives clearing organization shall equal 0.16 percent times the sum of the following:

(A) The current credit exposure for the derivative contract, calculated in accordance with paragraph (i)(1)(i) of this section;

(B) The potential future credit exposure for the derivative contract calculated in accordance with paragraph (i)(2) of this section; and

(C) The amount of collateral posted by the Bank and held by the derivatives clearing organization, clearing member, or custodian in a manner that is not bankruptcy remote, but only to the extent the amount exceeds the Bank's current credit exposure to the derivatives clearing organization.

(f)

Determination of credit risk percentage requirements

General.

Table 1 to § 1277.4Requirement for Advances

Maturity of advances

Percentage

applicable

to advances

Advances with:

Remaining maturity <=4 years

0.09

Remaining maturity >4 years to 7 years

0.23

Remaining maturity >7 years to 10 years

0.35

Remaining maturity >10 years

0.51

Table 2 to § 1277.4Requirement for Internally Rated Non-Mortgage Assets, Off-Balance Sheet Items, and Derivative Contracts

[Based on remaining contractual maturity]

FHFA Credit Rating

Applicable percentage

<=1 year

>1 yr to 3 yrs

>3 yrs to 7 yrs

>7 yrs to

10 yrs

>10 yrs

U.S. Government Securities

0.00

0.00

0.00

0.00

0.00

FHFA 1

0.20

0.59

1.37

2.28

3.32

FHFA 2

0.36

0.87

1.88

3.07

4.42

FHFA 3

0.64

1.31

2.65

4.22

6.01

FHFA 4

3.24

4.79

7.89

11.51

15.64

FHFA 5

9.24

11.46

15.90

21.08

27.00

FHFA 6

15.99

18.06

22.18

26.99

32.49

FHFA 7

100.00

100.00

100.00

100.00

100.00

Table 3 to § 1277.4Requirement for Non-Rated Assets

Type of unrated asset

Applicable

percentage

Cash

0.00

Premises, Plant and Equipment

8.00

Investments Under 12 CFR 1265.3(e) & (f)

8.00

(ii) Each Bank shall develop a methodology to be used to assign an internal credit risk rating to each counterparty, asset, item, and contract that is subject to Table 2 to this section. The methodology shall involve an evaluation of counterparty or asset risk factors, and may incorporate, but must not rely solely on, credit ratings prepared by credit rating agencies. Each Bank shall align its various internal credit ratings to the appropriate categories of FHFA Credit Ratings included in Table 2 to this section. In doing so, FHFA Categories 7 through 1 shall include assets of progressively higher credit quality. After aligning its internal credit ratings to the appropriate categories of Table 2 to this section, each Bank shall assign each counterparty, asset, item, and contract to the appropriate FHFA Credit Rating category based on the applicable internal credit rating.

(2)

Exception for assets subject to a guarantee or secured by collateral.

(ii) For purposes of paragraph (f)(2)(i) of this section, a non-mortgage asset shall be considered to be secured if the collateral is:

(A) Actually held by the Bank, or an independent third-party custodian on the Bank's behalf, or, if posted by a Bank member and permitted under the Bank's collateral agreement with that member, by the Bank's member or an affiliate of that member where the term affiliate has the same meaning as in § 1266.1 of this chapter;

(B) Legally available to absorb losses;

(C) Of a readily determinable value at which it can be liquidated by the Bank;

(D) Held in accordance with the provisions of the Bank's member products policy established pursuant to § 1239.30 of this chapter, if the collateral has been posted by a member or an affiliate of a member; and

(E) Subject to an appropriate discount to protect against price decline during the holding period and the costs likely to be incurred in the liquidation of the collateral.

(3)

Exception for obligations of the Enterprises.

(4)

Methodology and model review.

(g)

Credit risk capital charges for residential mortgage assets

Bank determination of credit risk percentage.

(ii) Each Bank shall determine the credit risk percentage requirement applicable to each residential mortgage, residential mortgage pool, and residential mortgage security by identifying the appropriate FHFA RMA category set forth in the following Table 4 to this section to which the asset belongs, and shall determine the credit risk percentage requirement applicable to each collateralized mortgage obligation by identifying the appropriate FHFA CMO category set forth in Table 4 to this section to which the asset belongs, with the appropriate categories being determined in accordance with paragraph (g)(1)(iii) of this section.

(iii) Each Bank shall develop a methodology to estimate the potential future stress losses on its residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations, as may yet occur from the current amortized cost (or fair value) of those assets, and that converts those loss estimates into a stress loss percentage for each asset, expressed as a percentage of its amortized cost (or fair value). A Bank shall use the stress loss percentage for each asset to determine the appropriate FHFA RMA or CMO ratings category for that asset, as set forth in Table 4 to this section. A Bank shall do so by assigning each such asset to the category whose credit risk percentage requirement equals the asset's stress loss percentage, or to the category with the next highest credit risk percentage requirement. For residential mortgages and residential mortgage pools, the methodology shall involve an evaluation of the residential mortgages and residential mortgage pools and any credit enhancements or guarantees, including an assessment of the creditworthiness of the providers of such enhancements or guarantees. In the case of a residential mortgage security or collateralized mortgage obligation, the methodology shall

involve an evaluation of the underlying mortgage collateral, the structure of the security, and any credit enhancements or guarantees, including an assessment of the creditworthiness of the providers of such enhancements or guarantees.

Table 4 to § 1277.4Requirement for Residential Mortgage Assets and CMOs

Credit risk

percentage

Categories for residential mortgage assets:

FHFA RMA 1

0.37

FHFA RMA 2

0.60

FHFA RMA 3

0.86

FHFA RMA 4

1.20

FHFA RMA 5

2.40

FHFA RMA 6

4.80

FHFA RMA 7

34.00

Categories for Collateralized Mortgage Obligations:

FHFA CMO 1

0.37

FHFA CMO 2

0.60

FHFA CMO 3

1.60

FHFA CMO 4

4.45

FHFA CMO 5

13.00

FHFA CMO 6

34.00

FHFA CMO 7

100.00

(2)

Exceptions.

(ii) A Bank may use a credit risk capital charge of zero for any residential mortgage asset or collateralized mortgage obligation, or any portion thereof, guaranteed or insured as to payment of principal and interest by a department or agency of the United States government that is backed by the full faith and credit of the United States; and

(iii) A Bank shall provide to FHFA upon request the methodology, model, and any analyses used to estimate the potential future stress losses on its residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations, and to determine a stress loss percentage for each such asset. FHFA may direct a Bank to promptly revise its methodology or model to address any deficiencies identified by FHFA.

(h)

Calculation of credit equivalent amount for off-balance sheet items

General requirement.

Table 5 to § 1277.4Credit Conversion Factors for Off-Balance Sheet Items

Instrument

Credit

conversion

factor

(in percent)

Asset sales with recourse where the credit risk remains with the Bank

100

Commitments to make advances subject to certain drawdown.

Commitments to acquire loans subject to certain drawdown.

Standby letters of credit

50

Other commitments with original maturity of over one year.

Other commitments with original maturity of one year or less

20

(2)

Exceptions.

(i)

Calculation of credit exposures for derivative contracts

Current credit exposure

Single derivative contract.

(A) If the mark-to-market value of the contract is positive, the mark-to-market value of the contract; or

(B) If the mark-to-market value of the contract is zero or negative, zero.

(ii)

Derivative contracts subject to an eligible master netting agreement.

(A) The net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to the eligible master netting agreement, if the net sum of the mark-to-market

values is positive; or

(B) Zero, if the net sum of the mark-to-market values is zero or negative.

(2)

Potential future credit exposure.

(i) Using an internal initial margin model that meets the requirements of § 1221.8 of this chapter and is approved by FHFA for use by the Bank, or using an initial margin model that has been approved under regulations similar to § 1221.8 of this chapter for use by the

(ii) By applying the standardized approach in appendix A to part 1221 of this chapter; or

(iii) Using an initial margin model that is employed by a derivatives clearing organization.

(j)

Credit risk capital charge for non-mortgage assets hedged with credit derivatives

Credit derivatives with a remaining maturity of one year or more.

(2)

Credit derivatives with a remaining maturity of less than one year.

(3)

Credit risk capital charge reduced to zero.

(i) The remaining maturity for the credit derivative used for the hedge is identical to or exceeds the remaining maturity for the hedged non-mortgage asset, and either:

(A) The non-mortgage asset referenced in the credit derivative is identical to the hedged non-mortgage asset; or

(B) The non-mortgage asset referenced in the credit derivative is different from the hedged non-mortgage asset, but only if the asset referenced in the credit derivative and the hedged non-mortgage asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to, or more junior than, the hedged non-mortgage asset and has the same maturity as the hedged non-mortgage asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the credit derivative contract calculated pursuant to paragraph

(e) of this section is still applied.

(4)

Capital charge reduction in certain other cases.

(i) The remaining maturity for the credit derivative is less than the remaining maturity for the hedged non-mortgage asset and either:

(A) The non-mortgage asset referenced in the credit derivative is identical to the hedged non-mortgage asset; or

(B) The non-mortgage asset referenced in the credit derivative is different from the hedged non-mortgage asset, but only if the asset referenced in the credit derivative and the hedged non-mortgage asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to, or more junior than, the hedged non-mortgage asset and has the same maturity as the hedged non-mortgage asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the unhedged portion of the non-mortgage asset equals:

(A) The credit risk capital charge for the non-mortgage asset, calculated as the amortized cost, or fair value, of the non-mortgage asset multiplied by that asset's credit risk percentage requirement assigned pursuant to paragraph (f)(1) of this section where the appropriate credit rating is that for the non-mortgage asset and the appropriate maturity is the remaining maturity of the non-mortgage asset; minus

(B) The credit risk capital charge for the non-mortgage asset, calculated as the amortized cost, or fair value, of the non-mortgage asset multiplied by that

(iii) The credit risk capital charge for the hedged portion of the non-mortgage asset is equal to the credit risk capital charge for the credit derivative, calculated in accordance with paragraph (e) of this section.

(k)

Frequency of calculations.

Market risk capital requirement.

(a)

General requirement.

(2) A Bank may substitute an internal cash-flow model to derive a market risk capital requirement in place of that calculated using an internal market-risk model under paragraph (a)(1) of this section, provided that:

(i) The Bank obtains FHFA approval of the internal cash-flow model and of the assumptions to be applied to the model; and

(ii) The Bank demonstrates to FHFA that the internal cash-flow model subjects the Bank's assets and liabilities, off-balance sheet items, and derivative contracts, including related options, to a comparable degree of stress for such factors as will be required for an internal market-risk model.

(b)

Measurement of market value-at-risk under a Bank's internal market-risk model.

(2) The Bank's internal market-risk model may use any generally accepted measurement technique, such as variance-covariance models, historical simulations, or Monte Carlo simulations, for estimating the market value of the Bank's portfolio at risk, provided that any measurement technique used must cover the Bank's material risks.

(3) The measures of the market value of the Bank's portfolio at risk shall include the risks arising from the non-linear price characteristics of options and the sensitivity of the market value of options to changes in the volatility of the options' underlying rates or prices.

(4) The Bank's internal market-risk model shall use interest rate and market price scenarios for estimating the market value of the Bank's portfolio at risk, but at a minimum:

(i) The Bank's internal market-risk model shall provide an estimate of the market value of the Bank's portfolio at risk such that the probability of a loss greater than that estimated shall be no more than one percent;

(ii) The Bank's internal market-risk model shall incorporate scenarios that reflect changes in interest

rates, interest rate volatility, option-adjusted spreads, and shape of the yield curve,

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to FHFA;

(B) Representative of the periods of the greatest potential market stress given the Bank's portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations among interest rates.

(5) For any consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, each Bank shall, in addition to fulfilling the criteria of paragraph (b)(4) of this section, calculate an estimate of the market value of its portfolio at risk resulting from material foreign exchange, equity price or commodity price risk, such that, at a minimum:

(i) The probability of a loss greater than that estimated shall not exceed one percent;

(ii) The scenarios reflect changes in foreign exchange, equity, or commodity market prices that have been observed over 120-business day periods of market stress, as determined using historical data that is from an appropriate period;

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to FHFA;

(B) Representative of the periods of the greatest potential stress given the Bank's portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations within or among foreign exchange rates, equity prices, or commodity prices.

(c)

Independent validation of Bank internal market-risk model or internal cash-flow model.

(2) The results of such independent validations shall be reviewed by the Bank's board of directors and provided promptly to FHFA.

(d)

FHFA approval of Bank internal market-risk model or internal cash-flow model.

(2) A model and any material adjustments to such model that were approved by FHFA or the Federal Housing Finance Board shall be deemed to meet the requirements of paragraph (d)(1) of this section, unless such approval is revoked or amended by FHFA.

(e)

Frequency of calculations.

§ 1277.6

Operational risk capital requirement.

(a)

General requirement.

(b)

Alternative requirements.

(1) The Bank provides an alternative methodology for assessing and quantifying an operational risk capital requirement; or

(2) The Bank obtains insurance to cover operational risk from an insurer acceptable to FHFA and on terms acceptable to FHFA.

§ 1277.7

Limits on unsecured extensions of credit; reporting requirements.

(a)

Unsecured extensions of credit to a single counterparty.

(1)

General limits.

(i) The Bank's total capital; or

(ii) The counterparty's Tier 1 capital, or if Tier 1 capital is not available, total capital (in each case as defined by the counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2)

Overall limits including sales of overnight federal funds.

(3)

Limits for certain obligations issued by state, local, or tribal governmental agencies.

(4)

Bank determination of applicable maximum capital exposure limits.

Table 1 to § 1277.7Maximum Limits on Unsecured Extensions of Credit to a Single Counter-party by

FHFA Credit Rating Category

FHFA Credit Rating

Maximum capital

exposure limit

(in percent)

FHFA 1

15

FHFA 2

14

FHFA 3

9

FHFA 4

3

FHFA 5 and Below

1

(b)

Unsecured extensions of credit to affiliated counterparties

In general.

(2)

Relation to individual limits.

(c)

Special limits for certain GSEs.

(d)

Extensions of unsecured credit after reduced rating.

(e)

Reporting requirements

Total unsecured extensions of credit.

(i) The Bank's total capital; or

(ii) The counterparty's, or affiliated counterparties' combined, Tier 1 capital, or if Tier 1 capital is not available, total capital (in each case as defined by the counterparty's principal regulator), or some similar comparable measure identified by the Bank.

(2)

Total secured and unsecured extensions of credit.

(3)

Extensions of credit in excess of limits.

(f)

Measurement of unsecured extensions of credit

In general.

(i) For on-balance sheet transactions (other than a derivative transaction addressed by paragraph (f)(1)(iii) of this section), an amount equal to the sum of the amortized cost of the item plus net payments due the Bank. For any such item carried at fair value where any change in fair value would be recognized in the Bank's income, the Bank shall measure the unsecured extension of

credit based on the fair value of the item, rather than its amortized cost;

(ii) For off-balance sheet transactions, an amount equal to the credit equivalent amount of such item, calculated in accordance with § 1277.4(h); and

(iii) For derivative transactions not cleared by a derivatives clearing organization, an amount equal to the sum of:

(A) The Bank's current and potential future credit exposures under the derivative contract, where those values are calculated in accordance with § 1277.4(i)(1) and (2) respectively, reduced by the amount of any collateral held by or on behalf of the Bank against the credit exposure from the derivative contract, as allowed in accordance with the requirements of § 1277.4(e)(2) and (3); and

(B) The value of any collateral posted by the Bank that exceeds the current amount owed by the Bank to its counterparty under the derivative contract, where the collateral is held by a person or entity other than a third-party custodian that is acting under a custody agreement that meets the requirements of § 1221.7(c) and (d) of this chapter.

(2)

Status of debt obligations purchased by the Bank.

(i) Any amount owed the Bank against which the Bank holds collateral in accordance with § 1277.4(f)(2)(ii); or

(ii) Any amount which FHFA has determined on a case-by-case basis shall not be considered an unsecured extension of credit.

(g)

Exceptions to unsecured credit limits.

(1) Obligations of, or guaranteed by, the United States;

(2) A derivative transaction accepted for clearing by a derivatives clearing organization, including collateral posted by the Bank with the derivatives clearing organization associated with that derivative transaction;

(3) Any extension of credit from one Bank to another Bank; and

(4) A bond issued by a state housing finance agency, if the Bank documents that the obligation in question is:

(i) Principally secured by high quality mortgage loans or high quality mortgage-backed securities (or funds derived from payments on such assets or from payments from any guarantees or insurance associated with such assets);

(ii) The most senior class of obligation, if the bond has more than one class; and

(iii) Determined by the Bank to be rated no lower than FHFA 2, in accordance with this section.

§ 1277.8

Reporting requirements.

Each Bank shall report information related to capital and other matters addressed by this part in accordance with instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

Subpart CBank 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.

(b)

Limitation on payment of dividends.

§ 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 stock holders 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.

(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.

(c)

Limitation.

§ 1277.27

Other restrictions on the repurchase or redemption of Bank stock.

(a)

Capital impairment.

(b)

Bank discretion to suspend redemption.

Subpart DBank 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.

(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.

(c)

Dividends.

(d)

Stock transactions.

(1) Shall provide that the Bank may not issue stock other than in accordance with § 1277.21;

(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.

(e)

Termination of membership.

§ 1277.29

Amendments to a Bank's capital plan.

(a)

In general.

(b)

Submission of amendments for approval.

(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.

(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

(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.

Pt. 1278

PART 1278VOLUNTARY MERGERS OF FEDERAL HOME LOAN BANKS

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

Continuing Bank

Disclosure Statement

Effective Date

Financial Statements

Merge

Merger

(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

[76 FR 72833, Nov. 28, 2011, as amended at 78 FR 2328, Jan. 11, 2013; 81 FR 76300, Nov. 2, 2016]

§ 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.

(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.

(c)

Completion of application.

(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.

(b)

Determination by Director.

(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.

§ 1278.6

Ratification by Bank Members.

(a)

Requirements for member vote.

(1)

Notice of vote.

(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.

(3)

Determination of result.

(4)

Notice of result.

(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.

§ 1278.7

Consummation of the merger.

(a)

Post-approval submissions.

(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.

(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.

(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)

Authority:

12 U.S.C. 1430, 1430b, 1430c, 1431.

Source:

75 FR 81105, Dec. 27, 2010, unless otherwise noted.

Subpart AGeneral

§ 1281.1

Definitions.

As used in this part:

AMA mortgage

AMA program

AMA user

Balloon mortgage

Borrower income

Community-based AMA user

Community-based AMA user asset cap

Conventional mortgage

Day

Designated disaster area

Dwelling unit

Families in low-income areas

(1) Any family that resides in a census tract 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

FEMA

Low-income

Median income

Metropolitan area

Minority

(1) American Indian or Alaskan Nativea 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) Asiana 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 Americana person having origins in any of the black racial groups of Africa;

(4) Hispanic or Latinoa 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 Islandera person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority census tract

Moderate-income

Mortgage

Mortgage

Mortgage purchase

Non-metropolitan area

Purchase money mortgage

Refinancing mortgage

(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

Seasoned mortgage

Secondary residence

Single-family housing

Very low-income

[75 FR 81105, Dec. 27, 2010, as amended at 78 FR 2328, Jan. 11, 2013; 81 FR 76300, Nov. 2, 2016; 81 FR 91690, Dec. 19, 2016; 85 FR 38050, June 25, 2020]

Subpart BHousing Goals

§ 1281.10

General.

Pursuant to the requirements of the Bank Act, as amended (12 U.S.C. 1430c), this subpart establishes:

(a) A prospective mortgage purchase housing goal;

(b) A small member participation housing goal;

(c) Requirements for measuring performance under the housing goals; and

(d) Procedures for monitoring and enforcing the housing goals.

[75 FR 81105, Dec. 27, 2010, as amended at 85 FR 38051, June 25, 2020]

§ 1281.11

Bank housing goals.

(a)

Prospective mortgage purchase housing goal

Target levels.

(i) A target level of 20 percent; or

(ii) An alternative target level proposed by the Bank and approved by FHFA under paragraph (c) of this section.

(2)

Cap on low-income areas loans counted toward goal.

(b)

Small member participation housing goal.

(1) A target level of 50 percent;

(2) A percentage that is three percentage points greater than the percentage from the preceding calendar year; or

(3) An alternative target level proposed by the Bank and approved by FHFA under paragraph (c) of this section.

(c)

Alternative target levels

Submission of Bank requests.

(2)

Content of Bank request.

(i) Why the target level for the goal in paragraphs (a) and (b) of this section, as applicable, is infeasible;

(ii) Why the Bank's proposed alternative target level is achievable; and

(iii) How the Bank's proposed alternative target level will meaningfully further affordable housing mortgage lending in its district.

(3)

Frequency of Bank requests

Three-year period.

(ii)

Exception for changes in AMA products or programs.

(iii)

Exception for special circumstances.

(4)

Public comment.

[85 FR 38051, June 25, 2020]

§ 1281.12

General counting requirements.

(a)

General.

e.g.,

(b)

No double-counting.

(c)

Application of median income.

(1) The metropolitan area, if the residence that secures 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 non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

(d)

Sampling not permitted.

[85 FR 38051, June 25, 2020]

§ 1281.13

Special counting requirements.

(a)

General.

(b)

Not counted.

i.e.,

i.e.,

(1) Purchases of participation interests in AMA mortgages from another Bank, except as provided in paragraph (e) of this section;

(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;

(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.

(1)

Cooperative housing and condominiums.

(2)

Seasoned mortgages.

(3)

Purchase of refinancing mortgages.

(4)

Non-conventional mortgages.

(d)

FHFA review of transactions.

(e)

Mortgage participation transactions.

pro rata

[75 FR 81105, Dec. 27, 2010, as amended at 85 FR 38052, June 25, 2020]

§ 1281.14

Determination of compliance with housing goals; notice of determination.

(a)

Determination of compliance with housing goals.

(b)

Failure to meet a housing goal.

(1)

Notice.

(2)

Response period

In general.

(ii)

Extended period.

(iii)

Shortened period.

(iv)

Failure to respond.

(3)

Consideration of information and final determination

In general.

(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.

[75 FR 81105, Dec. 27, 2010, as amended at 85 FR 38052, June 25, 2020]

§ 1281.15

Housing plans.

(a)

Housing plan requirement.

(b)

Nature of plan.

(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;

(4) Address any additional matters relevant to the housing plan as required, in writing, by the Director; and

(5) Address any alternative target levels for which the Bank has submitted a request under § 1281.11(c)(1).

(c)

Deadline for submission.

(d)

Review of housing plan.

(1)

Approval.

(2)

Notice of approval and disapproval.

(e)

Resubmission.

(f)

Enforcement of housing plan.

[75 FR 81105, Dec. 27, 2010, as amended at 85 FR 38052, June 25, 2020]

Subpart CReporting Requirements

Source:

85 FR 38052, June 25, 2020, unless otherwise noted.

§ 1281.20

Reporting requirements.

(a)

General.

(b)

Reporting for prospective mortgage purchase housing goal.

(c)

Reporting for small member participation housing goal.

(d)

Other reporting.

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PART 1282ENTERPRISE HOUSING GOALS AND MISSION

Subpart AGeneral

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Authority:

12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561-4566.

Source:

75 FR 55930, Sept. 14, 2010, unless otherwise noted.

Subpart AGeneral

§ 1282.1

Definitions.

(a)

Statutory terms.

(b)

Other terms.

Additional Activity,

Agricultural worker,

AHAR

AHAR information

Area of concentrated poverty,

Balloon mortgage

Borrower income

Charter Act

Colonia,

Colonia census tract,

Community development financial institution,

Conventional mortgage

Day

Designated disaster area

Dwelling unit

Efficiency

Evaluation Guidance,

Extremely low-income

(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

(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

Fannie Mae Charter Act

et seq.

Federally insured credit union,

Federally recognized Indian tribe,

FEMA

FOIA

Freddie Mac Act

et seq.

High-needs rural population,

(i) Members of a Federally recognized Indian tribe located in an Indian area; or

(ii) Agricultural workers.

High-needs rural region,

(i) Middle Appalachia;

(ii) The Lower Mississippi Delta;

(iii) A colonia census tract; 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,

(i) An area designated by HUD as a Difficult Development Area, pursuant to 26 U.S.C.

42(d)(5)(B)(iii), during

(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.

HOEPA mortgage

Indian area,

Insured depository institution,

et seq.

Lender

Low-income

(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.

Lower Mississippi Delta,

Manufactured home,

et seq.,

Manufactured housing community,

Median income

Metropolitan area

Middle Appalachia,

Minority

(i) American Indian or Alaskan Nativea 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) Asiana 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 Americana person having origins in any of the black racial groups of Africa;

(iv) Hispanic or Latinoa 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 Islandera person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority census tract

Mixed-income housing,

(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.

Moderate-income

(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

Mortgage data

Mortgage purchase

Mortgage revenue bond

Multifamily housing

Non-metropolitan area

Owner-occupied housing

Participation

Persistent poverty county,

Private label security

Proprietary information

Public data

Purchase money mortgage

Refinancing mortgage

(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.

(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.

Regulatory Activity,

Rent

(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 concessions shall not be considered,

i.e.,

(B) Rent is net of rental subsidies,

i.e.,

(ii) When the rent does not include all utilities, the rent shall also include:

(A) The actual cost of utilities not included in the rent;

(B) The nationwide average utility allowance, as issued periodically by FHFA;

(C) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located; or

(D) 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

Residence

Resident-owned manufactured housing community,

Residential economic diversity activity,

(i) Affordable housing in a high opportunity area; or

(ii) Mixed-income housing in an area of concentrated poverty.

Residential mortgage

Rural area,

(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:

(A) 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 64 housing units per square mile for USDA's RUCA Code #2; or

(B) A colonia census tract that does not satisfy paragraphs (i) or (ii)(A) of this definition.

Seasoned mortgage

Second mortgage

Secondary residence

Single-family housing

Small financial institution,

Small multifamily property

Small multifamily rental property,

Statutory Activity,

Underserved Markets Plan,

Utilities

Very low-income

(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.

[75 FR 55930, Sept. 14, 2010, as amended at 78 FR 2328, Jan. 11, 2013; 80 FR 53430, Sept. 3, 2015; 81 FR 76300, Nov. 2, 2016; 81 FR 96292, Dec. 29, 2016; 83 FR 5899, Feb. 12, 2018; 86 FR 73657, Dec. 28, 2021; 88 FR 23563, Apr. 18, 2023]

Subpart BHousing Goals

§ 1282.11

General.

(a)

General.

(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.

[75 FR 55930, Sept. 14, 2010, as amended at 80 FR 53430, Sept. 3, 2015; 86 FR 73657, Dec. 28, 2021]

§ 1282.12

Single-family housing goals.

(a)

Single-family housing goals.

(1) The share of the market that qualifies for the goal; or

(2) The benchmark level for the goal.

(b)

Size of market.

(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.

(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 2022, 2023, and 2024 shall be 28 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.

(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 2022, 2023, and 2024 shall be 7 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.

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) A benchmark level which shall be set annually by FHFA notice based on the sum of the benchmark levels for the low-income census tracts housing subgoal and the minority census tracts housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for moderate-income families in designated disaster areas in the most recent year for which such data is available.

(f)

Low-income census tracts housing subgoal.

(1) Consists of:

(i) Mortgages in low-income census tracts that are not minority census tracts; and

(ii) Mortgages for families with incomes in excess of 100 percent of the area median income in low-income census tracts that are also minority census tracts;

(2) Shall meet or exceed either:

(i) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(ii) The benchmark level, which for 2022, 2023, and 2024 shall be 4 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g)

Minority census tracts housing subgoal.

(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 2022, 2023, and 2024 shall be 10 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(h)

Refinancing housing goal.

(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 2022, 2023, and 2024 shall be 26 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

[80 FR 53430, Sept. 3, 2015, as amended at 83 FR 5899, Feb. 12, 2018; 85 FR 82895, Dec. 21,

2020' 86 FR 73658, Dec. 28, 2021]

§ 1282.13

Multifamily special affordable housing goal and subgoals.

(a)

Multifamily housing goal and subgoals.

(b)

Multifamily low-income housing goal.

(c)

Multifamily very low-income housing subgoal.

(d)

Small multifamily low-income housing subgoal.

[83 FR 5899, Feb. 12, 2018, as amended at 85 FR 82896, Dec. 21, 2020; 86 FR 73658, Dec. 28, 2022; 87 FR 78846, Dec. 23, 2022]

§ 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 30 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.

(1)

The numerator.

(2)

The denominator.

(b)

Counting owner-occupied units.

i.e.,

(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 goals and subgoal, but such mortgages shall not be counted in the numerator of any single-family housing goal or subgoal.

(c)

Calculating the numerator and denominator for multifamily housing goals.

(1)

The numerator.

(2)

The denominator.

(d)

Counting rental units

Use of rent.

(2)

Affordability of rents based on housing program requirements.

(3)

Unoccupied units.

(4)

Timeliness of information.

(e)

Missing data or information for multifamily housing goal and subgoals.

(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.

(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. Multifamily rental units with missing affordability information in excess of this maximum shall be included in the denominator for the multifamily housing goal and subgoals, but such rental units shall not be counted in the numerator of any multifamily housing goal or subgoal. Multifamily rental units with missing affordability information for which estimation information is not available shall be excluded from both the numerator and the denominator for purposes of the multifamily housing goal and subgoals.

(f)

Credit toward multiple goals.

(g)

Application of median income.

(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 non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

(h)

Sampling not permitted.

[75 FR 55930, Sept. 14, 2010, as amended at 80 FR 53431, Sept. 3, 2015; 83 FR 5899, Feb. 12, 2018; 86 FR 73658, Dec. 28, 2021; 87 FR 78846, Dec. 23, 2022]

§ 1282.16

Special counting requirements.

(a)

General.

(b)

Not counted.

(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.

(1)

Credit enhancements.

(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.

(4)

Participations.

(5)

Cooperative housing and condominiums.

(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.

(7)

Purchase of refinancing mortgages.

(8)

Mortgage revenue bonds.

(9) -(13) [Reserved]

(14)

Seller dissolution option.

(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.

(e)

FHFA review of transactions.

www.fhfa.gov.

[75 FR 55930, Sept. 14, 2010, as amended at 80 FR 53432, Sept. 3, 2015; 86 FR 73658, Dec. 28, 2021]

§ 1282.17

AffordabilityIncome level definitionsfamily 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

(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:

Number of persons in family

Percentage of area

median income

1

70

2

80

3

90

4

100

5 or more

*

*100% plus (8% multiplied by the number of persons in excess of 4).

(b)

Low-income (80%)

(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:

Number of persons in family

Percentage of area

median income

1

56

2

64

3

72

4

80

5 or more

*

*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c)

Low-income (60%)

(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:

Number of persons in family

Percentage of area

median income

1

42

2

48

3

54

4

60

5 or more

*

*60% plus (4.8% multiplied by the number of persons in excess of 4).

(d)

Very low-income

(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:

Number of persons in family

Percentage of area

median income

1

35

2

40

3

45

4

50

5 or more

*

*50% plus (4.0% multiplied by the number of persons in excess of 4).

(e)

Extremely low-income

(1) In the case of owner-occupied units, income not in excess of 30 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:

Number of persons in family

Percentage of area

median income

1

21

2

24

3

27

4

30

5 or more

*

*30% plus (2.4% multiplied by the number of persons in excess of 4).

[75 FR 55930, Sept. 14, 2010, as amended at 80 FR 53432, Sept. 3, 2015]

§ 1282.18

AffordabilityIncome level definitionsfamily 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:

(a)

For moderate-income,

Unit size

Percentage of area median income

Efficiency

70

1 bedroom

75

2 bedrooms

90

3 bedrooms or more

*

*104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b)

For low-income (80%),

Unit size

Percentage of area median income

Efficiency

56

1 bedroom

60

2 bedrooms

72

3 bedrooms or more

*

*83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c)

For low-income (60%),

Unit size

Percentage of area median income

Efficiency

42

1 bedroom

45

2 bedrooms

54

3 bedrooms or more

*

*62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

(d)

For very low-income,

Unit size

Percentage of area median income

Efficiency

35

1 bedroom

37.5

2 bedrooms

45

3 bedrooms or more

*

*52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

(e)

For extremely low-income,

Unit size

Percentage of area median income

Efficiency

21

1 bedroom

22.5

2 bedrooms

27

3 bedrooms or more

*

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

§ 1282.19

AffordabilityRent level definitionstenant income is not known.

For purposes of determining whether a rental unit is affordable where the income of the family in the dwelling unit

(a)

For moderate-income,

Unit size

Percentage of area median income

Efficiency

21

1 bedroom

22.5

2 bedrooms

27

3 bedrooms or more

*

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

(b)

For low-income (80%),

Unit size

Percentage of area median income

Efficiency

16.8

1 bedroom

18

2 bedrooms

21.6

3 bedrooms or more

*

*24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3).

(c)

For low-income (60%),

Unit size

Percentage of area median income

Efficiency

12.6

1 bedroom

13.5

2 bedrooms

16.2

3 bedrooms or more

*

*18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d)

For very low-income,

Unit size

Percentage of area median income

Efficiency

10.5

1 bedroom

11.25

2 bedrooms

13.5

3 bedrooms or more

*

*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

(e)

For extremely low-income,

Unit size

Percentage of area

median income

Efficiency

6.3

1 bedroom

6.75

2 bedrooms

8.1

3 bedrooms or more

*

* 9.36% plus (1.08% multiplied by the number of bedrooms in excess of 3).

[75 FR 55930, Sept. 14, 2010, as amended at 80 FR 53432, Sept. 3, 2015]

§ 1282.20

Determination of compliance with housing goals; notice of determination.

(a)

Single-family housing goals.

(b)

Multifamily housing goal and subgoals.

(c) Any notification to an Enterprise of a preliminary determination under this section shall provide the Enterprise with an opportunity to respond in writing in accordance with the procedures at 12 U.S.C. 4566(b).

[75 FR 55930, Sept. 14, 2010, as amended at 80 FR 53433, Sept. 3, 2015]

§ 1282.21

Housing plans.

(a)

General.

(b)

Nature of plan.

(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 in a time period determined by the Director to improve the Enterprise's performance under the housing goal; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c)

Deadline for submission.

(d)

Review of housing plans.

(e)

Resubmission.

[75 FR 55930, Sept. 14, 2010, as amended at 83 FR 5899, Feb. 12, 2018]

Subpart CDuty to Serve Underserved Markets

Source:

81 FR 96294, Dec. 29, 2016, unless otherwise noted.

§ 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.

(b)

Term of Plan.

(c)

Effective date of Plans.

(d)

Plan content.

Consideration of minimum number of activities.

(2)

Additional Activities.

(3)

Residential economic diversity activities.

(e)

Objectives.

(1)

Strategic.

(2)

Measurable.

(3)

Realistic.

(4)

Time-bound.

(5)

Tied to analysis of market opportunities.

(f)

Evaluation areas.

(g)

Plan procedures.

Submission of proposed Plans.

First proposed Plan.

(ii)

Subsequent proposed Plans.

(2)

Posting of proposed Plans.

(3)

Public input.

(ii) The Enterprises' subsequent proposed Plans will be available for public input pursuant to the timeframe and procedures established by FHFA.

(4)

Enterprise review.

(5)

FHFA review.

FHFA review of first proposed Plans.

(ii)

FHFA review of subsequent proposed Plans.

(iii)

Designation of Statutory Activity or Regulatory Activity.

(iv)

FHFA Non-Objections to underserved markets in a proposed Plan.

(6)

Effective date of an underserved market in a Plan.

(7)

Posting of an underserved market section in a Plan.

(h)

Modification of a Plan.

§ 1282.33

Manufactured housing market.

(a)

Duty in general.

(b)

Eligible activities.

(c)

Regulatory Activities.

(1)

Manufactured homes titled as real property.

(2)

Chattel.

(3)

Manufactured housing communities owned by a governmental entity, nonprofit organization, or residents.

(4)

Manufactured housing communities with certain 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.

§ 1282.34

Affordable housing preservation market.

(a)

Duty in general.

(b)

Eligible activities.

(c)

Statutory Activities.

(1)

Section 8.

(2)

Section 236.

(3)

Section 221(d)(4).

(4)

Section 202.

(5)

Section 811.

(6)

McKinney-Vento Homeless Assistance.

et seq.;

(7)

Section 515.

(8)

Low-income housing tax credits.

(9)

Other comparable state or local affordable housing programs.

(d)

Regulatory Activities.

(1)

Financing of small multifamily rental properties.

(2)

Energy or water efficiency improvements on multifamily rental properties.

(3)

Energy or water efficiency improvements on single-family, first lien properties.

(4)

Shared equity programs for affordable homeownership preservation.

(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.

(6)

HUD Rental Assistance Demonstration program.

(7)

Purchase or rehabilitation of certain distressed properties.

(e)

Additional Activities.

§ 1282.35

Rural markets.

(a)

Duty in general.

(b)

Eligible activities.

(c)

Regulatory Activities.

(1)

High-needs rural regions.

(2)

High-needs rural populations.

(3)

Financing by small financial institutions of rural housing.

(4)

Small multifamily rental properties in rural areas.

(d)

Additional Activities.

§ 1282.36

Evaluations, ratings, and Evaluation Guidance.

(a)

Evaluation of compliance.

(b)

Evaluation areas.

(1)

Outreach.

(2)

Loan product.

(3)

Loan purchase.

(4)

Investments and grants.

(c)

Evaluation process.

(1)

Quantitative assessment.

(2)

Qualitative assessment.

(3)

Extra credit-eligible activities.

(4)

Ratings.

Assignment of ratings.

(ii)

Ongoing Assessment of Evaluation and Rating Process.

(d)

Evaluation Guidance.

Three-year term.

(2)

Contents.

(3)

Timelines for Evaluation Guidance.

For the first Plan.

(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.

(4)

Posting of Evaluation Guidance.

(5)

Modification of Evaluation Guidance.

§ 1282.37

General requirements for credit.

(a)

General.

(b)

No credit under any evaluation area.

(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.

(1)

Permanent construction take-out loans.

(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.

(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.

(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.

(f)

The year in which an activity or objective will receive credit.

(g)

Credit under one evaluation area.

(h)

Credit under multiple underserved markets.

§ 1282.38

General requirements for loan purchases.

(a)

General.

(b)

Counting dwelling units.

(c)

Credit for owner-occupied units.

i.e.,

(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.

Use of rent.

(2)

Affordability of rents based on housing program requirements.

(3)

Unoccupied units.

(4)

Timeliness of information.

(e)

Missing data or information for rental units.

(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. The estimated affordability

information is calculated by multiplying the number of rental units with missing affordability information in properties securing the mortgages purchased by the Enterprise in each census tract by the percentage of all moderate-income rental dwelling units in the respective tracts, as determined by FHFA.

(f)

Affordability of manufactured housing communities.

(1)

Methodology for government-, nonprofit- or resident-owned manufactured housing communities.

(2)

Census tract methodology for any type of manufactured housing community.

(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.

(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.

(i) A census tract; or

(ii) A census place code.

(h)

Newly available data.

§ 1282.39

Special requirements for loan purchases.

(a)

General.

(b)

Credit enhancements.

(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.

(d)

Participations.

(e)

Cooperative housing and condominiums.

i.e.,

(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.

(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.

(g)

Purchase of refinancing mortgages.

(h)

Mortgage revenue bonds.

(i)

Seller dissolution option.

(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.

(b)

Nature of housing plan.

(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.

(d)

Review of housing plans.

(e)

Resubmission.

Subpart DReporting 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.

(b)

Quarterly Mortgage Reports.

(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.

(d)

Revisions to Reports.

(e)

Format.

§ 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.

(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.

§ 1282.66

Enterprise reports on duty to serve.

(a)

First and third quarter reports.

(b)

Second quarter report.

(c)

Annual report.

(d)

Public disclosure of information from reports.

[81 FR 96300, Dec. 29, 2016]

Pt. 1290

PART 1290COMMUNITY SUPPORT REQUIREMENTS

Sec.

1290.1

Definitions.

1290.2

Authority:

12 U.S.C. 1430(g).

Source:

80 FR 30342, May 28, 2015, unless otherwise noted.

§ 1290.1

Definitions.

For purposes of this part:

Advisory Council

CDFI Fund

Community development financial institution or CDFI

et seq.

CRA

et seq.

CRA evaluation

Displaced homemaker

First-time homebuyer

(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

(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

Restriction on access to long-term advances

Single parent

Targeted community lending

[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.

(b)

Community Support Statement submission requirements.

(c)

Notice to public.

By the Banks.

(2)

By FHFA.

Federal Register

(3)

Consideration of comments.

(d)

Non-Depository Community Development Financial Institutions.

(e)

New Bank members.

(f)

Designation of submission and notice dates.

[83 FR 52117, Oct. 16, 2018]

§ 1290.3

Community support standards.

(a)

In general.

(b)

CRA standard.

(c)

First-time homebuyer standard.

(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

(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.

(b)

Complete Community Support Statements.

(c)

Decision on Community Support Statements.

§ 1290.5

Probation or restriction on member access to long-term Bank advances.

(a)

Probation.

(b)

Restriction.

(1) The member failed to sign its Community Support Statement submitted to FHFA pursuant to § 1290.2(b), 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.

Probation.

(2)

Restriction.

(d)

Removing a restriction.

(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 under this paragraph (d). The Bank shall promptly notify the member of FHFA's determination to remove a restriction. FHFA's determination shall take effect on the date the notice is sent by FHFA to the Bank.

(e)

Bank Affordable Housing Programs and other Bank Community Investment Cash Advance Programs.

[80 FR 30342, May 28, 2015, as amended at 83 FR 52118, Oct. 16, 2018]

§ 1290.6

Bank community support programs.

(a)

Requirement.

(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. The Bank's board of directors shall not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility to adopt or amend the Targeted Community Lending Plan. The Targeted Community Lending Plan shall:

(i) Reflect market research conducted 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) Be developed in consultation with (and may only be amended after consultation with) its Advisory Council and with members, housing associates, and public and private economic development organizations in the Bank's district;

(iv) Establish quantitative targeted community lending performance goals;

(v) Identify and assess significant affordable housing needs in its district that will be addressed through its Affordable Housing Program under 12 CFR part 1291, reflecting market research conducted or obtained by the Bank; and

(vi) For any Targeted Funds established by the Bank under its Affordable Housing Program, specify, from among the identified affordable housing needs, the particular affordable housing needs the Bank plans to address through such Targeted Funds.

(b)

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.

(c)

Public access.

[80 FR 30342, May 28, 2015, as amended at 83 FR 61231, Nov. 28, 2018; 87 FR 32969, June 1, 2022]

§ 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.

§ 1290.8

Compliance dates.

From December 28, 2018 to December 31, 2020, a Bank shall comply with either prior part 1290 (in 12 CFR part 1290 (January 1, 2018 edition)) or this part 1290. On and after January 1, 2021, a Bank shall comply with this part 1290.

[83 FR 61231, Nov. 28, 2018]

Pt. 1291

PART 1291FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

Subpart AGeneral

Affordable Housing Reserve Fund.

Authority:

12 U.S.C. 1430(j).

Source:

83 FR 61231, Nov. 28, 2018, unless otherwise noted.

Subpart AGeneral

§ 1291.1

Definitions.

As used in this part:

Affordable

(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 definition 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

AHP project

Cost of funds

Direct subsidy

Eligible household

(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

Extremely low-income household

Family member

Funding round

General Fund

(i.e.,

Homeownership Set-Aside Program

i.e.,

Household's investment

(1) Reasonable and customary costs paid by the household in connection with the purchase of the unit (including real estate broker's commission, attorney's fees, and title search fees);

(2) Any down payment paid in connection with the household's purchase of the unit;

(3) The cost of any capital improvements made after the household's purchase of the unit until the time of the subsequent sale, transfer, assignment of title or deed, or refinancing; and

(4) The amount of principal on any mortgage senior to the AHP subsidy lien or other legally enforceable AHP subsidy repayment obligation repaid by the household.

LIHTC

Loan pool

Low- or moderate-income household

Median income for the area

(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 FHFA, at the request of a Bank, for use under the AHP.

Multifamily building

Net earnings of a Bank

Net proceeds

(1) In the case of a sale, transfer, or assignment of title or deed of an AHP-assisted unit by a household during the AHP five-year retention period, the sales price minus reasonable and customary costs paid by the household in connection with the transaction (including real estate broker's commission, attorney's fees, and title search fees) and outstanding debt superior to the AHP subsidy lien or other legally enforceable AHP subsidy repayment obligation;

(2) In the case of a refinancing of an AHP-assisted unit by a household during the AHP five-year retention period, the principal amount of the new mortgage minus reasonable and customary

Owner-occupied project

Owner-occupied unit

Program

Rental project

Retention period

(1) Five years from closing for an AHP-assisted owner-occupied unit where the AHP subsidy is used for purchase of the unit, for purchase in conjunction with rehabilitation of the unit, or for construction of the unit; and

(2) Fifteen years from the date of completion for a rental project.

Revolving loan fund

Single-family building

Sponsor

(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.

Subsidized advance

Subsidy

(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.

Targeted Fund

i.e.,

Very low-income household

Visitable

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

§ 1291.2

Compliance dates.

(a)

General January 1, 2021 compliance date.

(b)

January 1, 2020 compliance date for owner-occupied retention agreements; exception for adoption of proxies.

Subpart BProgram Administration and Governance

§ 1291.10

Required annual AHP contribution.

Each Bank shall contribute annually to its Program the greater of:

(a) 10 percent of the Bank's net earnings for the previous year; or

(b) 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.

§ 1291.11

Temporary suspension of AHP contributions.

(a)

Request to FHFA.

(b)

Director review

Financial instability.

(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.

(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

Allocation of required annual AHP contribution.

Each Bank, after consultation with its Advisory Council and pursuant to written policies adopted by the Bank's board of directors, shall meet the following requirements for allocation of its required annual AHP contribution.

(a)

General Fund.

(b)

Homeownership Set-Aside Programs.

(c)

Targeted Fundsphase-in requirements for funding allocations.

(1) 20 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds;

(2) 30 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds, provided that it allocated at least 20 percent, in the aggregate, of its required annual AHP contribution to one or more Targeted Funds in any preceding year; or

(3) 40 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds, provided that it allocated at least 30 percent, in the aggregate, of its required annual AHP contribution to one or more Targeted Funds in any preceding year.

(d)

Acceleration of funding.

(e)

No delegation.

§ 1291.13

Targeted Community Lending Plan; AHP Implementation Plan.

(a)

Targeted Community Lending Plan

Identification of housing needs.

(2)

Public access.

(3)

Notification of Plan amendments to FHFA.

(b)

AHP Implementation Plan.

(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.

(2) For the General Fund established by the Bank pursuant to § 1291.20(a), the Bank's requirements for the General Fund, including the Bank's scoring methodology, including its scoring tie-breaker policy adopted pursuant to

(3) For each Targeted Fund established by the Bank, if any, pursuant to § 1291.20(b), the Bank's requirements for the Targeted Fund, including the Bank's scoring methodology for each Fund, including its scoring tie-breaker policy adopted pursuant to §§ 1291.25(c) and 1291.28(c), and any policy on approving AHP application alternates for funding pursuant to §§ 1291.25(c)(6) and 1291.28(b), and the parameters adopted pursuant to § 1291.20(b)(2).

(4) The Bank's policy on how it will determine under which Fund to approve an application for the same project that is submitted to more than one Fund at a Bank in a calendar year and scores high enough to be approved under each Fund, pursuant to § 1291.28(d).

(5) For each Homeownership Set-Aside Program established by the Bank, if any, pursuant to § 1291.40, the Bank's requirements for the program, including the Bank's application and subsidy disbursement methodology.

(6) The Bank's retention agreement requirements for projects and households under its General Fund, any Targeted Funds, and any Homeownership Set-Aside Programs, pursuant to §

1291.15(a)(7) and (8), including the proxy or proxies selected by the Bank for determining a subsequent purchaser's income pursuant to FHFA guidance under § 1291.15(a)(7)(ii)(B).

(7) The Bank's standards for approving a relocation plan for current occupants of rental projects pursuant to § 1291.23(a)(2)(ii)(B).

(8) Any optional Bank district eligibility requirements adopted by the Bank pursuant to § 1291.24(c).

(9) The Bank's requirements for funding revolving loan funds, if adopted by the Bank pursuant to § 1291.31;

(10) The Bank's requirements for funding loan pools, if adopted by the Bank pursuant to § 1291.32;

(11) The Bank's requirements for monitoring under its General Fund and any Targeted Funds and Homeownership Set-Aside Programs pursuant to §§ 1291.50 and 1291.51.

(12) The Bank's requirements, including time limits, for re-use of repaid AHP direct subsidy in the same project, if adopted by the Bank pursuant to § 1291.64(b).

(c)

Advisory Council review.

(d)

Notification of Plan amendments to FHFA.

(e)

Public access.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

§ 1291.14

Advisory Councils.

(a)

Appointment.

(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.

(3) The Bank's board of directors shall appoint Advisory Council members from a diverse range of organizations so that representatives of no one group constitute an undue proportion of the membership of the Advisory Council, giving consideration to the

(b)

Terms of Advisory Council members.

(c)

Election of officers.

(d)

Duties

Meetings with the Banks.

(ii) The Advisory Council's advice shall include recommendations on:

(A) The Bank's Targeted Community Lending Plan, and any amendments thereto, pursuant to 12 CFR 1290.6(a)(5)(iii);

(B) The amount of AHP funds to be allocated to the Bank's General Fund and any Targeted Funds and Homeownership Set-Aside Programs, including how the set-aside funds should be apportioned under the one-third funding allocation requirement in § 1291.12(b);

(C) The AHP Implementation Plan and any subsequent amendments thereto;

(D) The Bank's scoring methodologies, related definitions, and any additional optional district eligibility requirements for the General Fund and any Targeted Funds; and

(E) The eligibility requirements and any priority criteria for any Homeownership Set-Aside Programs.

(2)

Summary of AHP applications.

(3)

Annual analysis; public access.

(ii) Within 30 days after the date the Advisory Council's annual analysis is submitted to FHFA, the Bank shall publish the analysis on its publicly available website.

(e)

Expenses.

(f)

No delegation.

§ 1291.15

Agreements.

(a)

Agreements between Banks and members.

(1)

Notification of member.

(2)

AHP subsidy pass-through.

(3)

Use of AHP subsidy

Use of AHP subsidy by the member.

(ii)

Use of AHP subsidy by the project sponsor or owner.

(4)

Repayment of AHP subsidies in case of noncompliance

Noncompliance by the member.

(ii)

Noncompliance by a project sponsor or owner

Agreement.

(B)

Recovery of AHP subsidies.

(5)

Project monitoring

Monitoring by the member.

(ii)

Agreement; LIHTC noncompliance notice.

(6)

Transfer of AHP obligations

To another member.

(ii)

To a nonmember.

(7)

Owner-occupied unitsrequired provisions for retention agreements.

(i)

Notice.

(ii)

Repayment of subsidy; exceptions.

(A) The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;

(B) The subsequent purchaser, transferee, or assignee is a low- or moderate-income household, as determined by

(C) The amount of the AHP subsidy that would be required to be repaid in accordance with the calculation in paragraph (a)(7)(v) of this section is $2,500 or less; or

(D) 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);

(iii)

Subsidy repayments to Bank, member, or project sponsor.

(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 § 1291.64(b) 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 re-use 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 § 1291.64(b);

(iv)

Termination of subsidy repayment obligation.

(v)

Calculation of AHP subsidy repayment based on net proceeds and household's investment.

(A) The AHP subsidy, reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, or is refinanced, during the AHP five-year retention period; or

(B) Any net proceeds from the sale, transfer, or assignment of title or deed of the unit, or the refinancing, as applicable, minus the AHP-assisted household's investment.

(8)

Rental projectsrequired provisions for retention agreements.

(i)

Income and rent commitments.

(ii)

Notice.

(iii)

Repayment of subsidy; exceptions.

(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 AHP 15-year retention period; or

(B) If authorized by the Bank, in its discretion, the households are relocated, due to the exercise of

eminent

(iv)

Termination of income and rent restrictions.

(9)

Lending of AHP direct subsidies.

(10)

Special provisions where members obtain AHP subsidized advances

Repayment schedule.

(ii)

Prepayment fees.

(iii)

Treatment of loan prepayment by project.

(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

Repayment of subsidies.

(2)

Project sponsor qualifications.

(c)

Application to existing AHP agreements.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

§ 1291.16

Conflicts of interest.

(a)

Bank directors and employees.

(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.

(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.

Subpart CGeneral Fund and Targeted Funds

§ 1291.20

Establishment of programs.

(a)

General Fund

Establishment.

(2)

Eligibility requirements.

(b)

Targeted Funds

Establishment; number of Targeted Funds and funding allocation amounts.

(i) One Targeted Fund;

(ii) Two Targeted Funds to be administered in the same calendar year, provided that the Bank administered at least one Targeted Fund in any preceding year; or

(iii) Three Targeted Funds to be administered in the same calendar year, provided that the Bank administered at least two Targeted Funds in any preceding year.

(2)

Eligibility requirements.

(ii) A Bank may not adopt eligibility requirements for its Targeted Funds except as specifically authorized in this part.

§ 1291.21

Eligible applicants.

(a)

Member applicants.

(b)

Project sponsor qualifications

In general.

(2)

Revolving loan fund.

(i) Provide audited financial statements that its operations are consistent with sound business practices; and

(ii) Demonstrate the ability to re-lend AHP subsidy repayments on a timely basis and track the use of the AHP subsidy.

(3)

Loan pool.

(i) Provide evidence of sound asset/liability management practices;

(ii) Provide audited financial statements that its operations are consistent with sound business practices; and

(iii) Demonstrate the ability to track the use of the AHP subsidy.

§ 1291.22

Funding rounds; application process.

(a)

Funding rounds.

(b)

Submission of applications.

(1) Determine that the proposed AHP project meets the eligibility requirements of this part; and

(2) Evaluate the application pursuant to the scoring methodology adopted by the Bank pursuant to §§ 1291.25, 1291.26, and 1291.27, as applicable.

(c)

Review of applications submitted.

§ 1291.23

Eligible projects.

Projects receiving AHP subsidies pursuant to a Bank's General Fund and any Targeted Funds must meet the following eligibility requirements:

(a)

Owner-occupied or rental housing.

(1)

Owner-occupied housing.

(2)

Rental housing.

(i)

Projects that are not occupied.

(ii)

Projects that are occupied.

(B) If the project has a relocation plan for current occupants that is approved by one of its federal, state, or local government funders, or a reasonable relocation plan for current occupants that is otherwise approved by the Bank according to standards included

(b)

Project feasibility

Developmental feasibility.

(2)

Operational feasibility of rental projects.

(c)

Timing of AHP subsidy use.

(d)

Retention agreements

Owner-occupied projects.

(2)

Rental projects.

(e)

Fair housing.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

§ 1291.24

Eligible uses.

(a)

Eligible uses of AHP subsidy.

(1)

Owner-occupied housing.

(2)

Rental housing.

(3)

Need for AHP subsidy

Review of project development budget.

(ii)

Cash sources of funds.

(iii)

Cash uses.

(4)

Project costs

In general.

(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.

(5)

Financing costs.

(6)

Counseling costs.

(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.

(7)

Refinancing.

(8)

Calculation of AHP subsidy.

(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 manages the funding to support the subsidized advance through its asset/liability management system, or otherwise.

(b)

Prohibited uses of AHP subsidy.

(1)

Certain prepayment fees.

(i) The project is in financial distress that cannot be remedied through a project modification pursuant to § 1291.29;

(ii) The prepayment of the subsidized advance is necessary to retain the project's affordability and income targeting commitments;

(iii) Subsequent to such prepayment, the project will continue to comply

(iv) Any unused AHP subsidy is returned to the Bank and made available for other AHP projects or households; and

(v) The amount of AHP subsidy used for the prepayment fee may not exceed the amount of the member's prepayment fee to the Bank;

(2)

Cancellation fees.

(3)

Processing fees.

(4)

Reserves and certain expenses.

(c)

Optional Bank district eligibility requirements.

(1)

AHP subsidy limits.

(2)

Homebuyer or homeowner counseling.

(d)

Applications to multiple Fundssubsidy amount.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

§ 1291.25

Scoring methodologies.

(a)(1)

Written scoring methodologies.

(2)

Scoring points allocations

General Fund.

(ii)

Targeted Funds.

(3)

Fixed-point and variable-point scoring criteria.

(i) Fixed-point scoring criteria are those that 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 scoring criterion in § 1291.26(d) as a variable-point criterion.

(b)

Satisfaction of scoring criteria.

(c)

Scoring tied applications.

(1) The Bank shall consult with its Advisory Council prior to adoption of its policy;

(2) The Bank shall adopt the policy in advance of an AHP funding round and include it in its AHP Implementation Plan;

(3) The policy shall include the methodology used to break a scoring tie, which may differ for each Fund, and which shall be selected from the particular Fund's scoring criteria adopted in the Bank's AHP Implementation Plan;

(4) The scoring tie-breaker methodology shall be reasonable, transparent, verifiable, and impartial;

(5) The scoring tie-breaker methodology shall be used solely to break a scoring tie and may not affect the eligibility of the applications, including financial feasibility, or their scores and resultant rankings;

(6) The Bank shall approve a tied application as an alternate pursuant to § 1291.28(b) if the application does not prevail under the scoring tie-breaker methodology, or if the application is tied with another application but requested more subsidy than the amount of AHP funds that remain to be awarded, if the Bank has a written policy to approve alternates for funding under the applicable Fund; and

(7) The Bank shall document in writing its analysis and results for each use of the scoring tie-breaker methodology.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

§ 1291.26

Scoring criteria for the General Fund.

A Bank shall adopt in its scoring methodology for its General Fund all of the following categories of scoring criteria, including at least one housing need under each of paragraphs (e), (f), and (g) of this section, except that a Bank is not required to adopt the scoring criterion for homeownership by low- or moderate-income households in paragraph (c) of this section if the Bank allocates at least 10 percent of its required annual AHP contribution to any Homeownership Set-Aside Programs, and a Bank is not required to adopt the scoring criterion for Bank district priorities in paragraph (h) of this section:

(a)

Use of donated or conveyed government-owned or other properties.

(1) Land or units donated or conveyed by the federal government or any agency or instrumentality thereof; or

(2) Land or units donated or conveyed by any other party for an amount significantly below the fair market value

(b)

Sponsorship by a not-for-profit organization or government entity.

(c)

Home purchase by low- or moderate-income households.

(d)

Income targeting.

(1)

Rental projects.

(2)

Owner-occupied projects.

(3)

Separate scoring.

(e)

Underserved communities and populations.

(1)

Housing for homeless households.

(2)

Housing for special needs populations.

(3)

Housing for other targeted populations.

(4)

Housing in rural areas.

(5)

Rental housing for extremely low-income households.

(6)

Other.

(f)

Creating economic opportunity.

(1)

Promotion of empowerment.

(2)

Residential economic diversity.

(3)

Other.

(g)

Community stability, including affordable housing preservation.

(h)

Bank district priorities.

§ 1291.27

Scoring criteria for Targeted Funds.

A Bank shall adopt in its scoring methodology for each Targeted Fund established by the Bank at least three different scoring criteria, as determined by the Bank in its discretion, that allow the Bank to select applications that meet the specific affordable housing need or needs being addressed by the Targeted Fund.

§ 1291.28

Approval of AHP applications under the General Fund and Targeted Funds.

(a)

Approval of AHP applications.

(b)

AHP application alternates.

(c)

Tied applications.

(2) A tied application that does not prevail under the Bank's scoring tie-breaker methodology, or is tied with another application but requested more subsidy than the amount of AHP funds that remain to be awarded under the Fund, shall be approved as an alternate for funding if the Bank has a written policy to approve alternates for funding under the Fund.

(d)

Applications to multiple Fundsapproval under one Fund.

(e)

No delegation.

§ 1291.29

Modifications of approved AHP applications.

(a)

Modification procedure.

(1) The Bank first requests that the project sponsor or owner make a reasonable effort to cure any noncompliance within a reasonable period of time, and the noncompliance could not be cured within a reasonable period of time;

(2) The project, incorporating any such changes, would meet the eligibility requirements of this part;

(3) The application, as reflective of such changes, continues to score high enough to have been approved in the AHP funding round in which the application was originally scored and approved by the Bank, which is as high as the lowest ranking alternate approved for funding by the Bank if the Bank has a written policy to approve alternates for funding; and

(4) There is good cause for the modification, which may not be solely remediation of noncompliance, and the analysis and justification for the modification, including why a cure of noncompliance was not successful or attempted, are documented by the Bank in writing.

(b)

AHP subsidy increases; no delegation

AHP subsidy increases.

(2)

No delegation.

§ 1291.30

Procedures for funding.

(a)

Disbursement of AHP subsidies to members.

(2) 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

(b)

Progress towards use of AHP subsidy.

(c)

Compliance upon disbursement of AHP subsidies.

(d)

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.

(e)

AHP outlay adjustment.

(f)

Project sponsor notification of re-use of repaid AHP direct subsidy.

§ 1291.31

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 General Fund or any Targeted Funds 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:

(a)

Submission of application.

(2) The information in the application shall be sufficient for the Bank to:

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(ii) Evaluate the criteria for the initial lending of the subsidy, and the specific proposed project if

applicable, pursuant to the scoring methodology established by the Bank pursuant to §§ 1291.25, 1291.26, and 1291.27, as applicable.

(b)

Review of application.

(c)

Initial lending of subsidy.

(2) If an owner-occupied unit or project funded under this paragraph (c) 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 §§ 1291.15(a)(7), 1291.15(a)(8), and 1291.60, 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 owner-occupied unit or project meeting the initial lending requirements of this paragraph (c) for the remainder of the retention period.

(d)

Subsequent lending of AHP subsidy principal and interest repayments.

(2) 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 (d).

(3) 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.

(e)

Return of unused AHP subsidy.

§ 1291.32

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 General Fund or any Targeted Funds 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:

(a)

Eligibility requirements.

(b)

Forward commitment.

(2) 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 one 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.

(c) Each AHP-assisted owner-occupied unit and rental project receiving AHP direct subsidy or a subsidized advance shall be subject to the requirements of §§ 1291.15, 1291.50, and 1291.60, respectively.

(d) 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.

Subpart DHomeownership Set-Aside Programs

§ 1291.40

Establishment of programs.

A Bank may establish, in its discretion, one or more Homeownership Set-Aside Programs pursuant to the requirements of this part.

§ 1291.41

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.

§ 1291.42

Eligibility requirements.

A Bank's Homeownership Set-Aside Programs shall meet the eligibility requirements set forth in this section. A Bank may not adopt additional eligibility requirements for its Homeownership Set-Aside Programs except for eligible households pursuant to paragraph (b) of this section.

(a)

Member allocation criteria.

(b)

Eligible households.

(1) 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 Programs, with such time of enrollment by the member defined by the Bank in its AHP Implementation Plan;

(2) 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

(3) Are first-time homebuyers or households receiving AHP subsidy for owner-occupied rehabilitation, in the case of households receiving subsidy pursuant to the one-third set-aside funding allocation requirement in § 1291.12(b), and meet such other eligibility criteria that may be established

(c)

Maximum grant limit.

(d)

Eligible uses of AHP direct subsidy.

(e)

Retention agreement.

(f)

Financial or other concessions.

(g)

Financing costs.

(h)

Counseling costs.

(1) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(2) The cost of the counseling has not been covered by another funding source, including the member.

(i)

Cash back to household.

§ 1291.43

Approval of AHP applications.

A Bank shall approve applications for AHP direct subsidy under its Homeownership Set-Aside Programs in accordance with the Bank's criteria governing the allocation of funds.

§ 1291.44

Procedures for funding.

(a)

Disbursement of AHP direct subsidies to members.

(2) 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

(b)

Reservation of Homeownership Set-Aside Program subsidies.

(c)

Progress towards use of AHP direct subsidy.

Subpart EMonitoring

§ 1291.50

Monitoring under the General Fund and Targeted Funds.

(a)

Initial monitoring policies for owner-occupied and rental projects.

(1)

Satisfactory progress.

(i) 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; and

(ii) Following completion of the project, satisfactory progress is being made towards occupancy of the project by eligible households.

(2)

Project sponsor or owner certification, rent roll and other documentation; backup and other project

documentation.

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(ii) The household incomes and rents comply with the income targeting and rent commitments made in the approved AHP application;

(iii) The project's 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, as determined pursuant to § 1291.24(a)(4);

(iv) Each AHP-assisted unit of an owner-occupied project and rental project is subject to an AHP retention agreement that meets the requirements of § 1291.15(a)(7) and (8), respectively; and

(v) The services and activities committed in the approved AHP application have been provided.

(3)

Back-up and other project documentation.

(i) Bank review within a reasonable period of time after project completion of back-up project documentation regarding household incomes and rents (not including the rent roll) maintained by the project sponsor or owner, except for projects that received funds from other federal, state or local government entities whose programs meet the requirements in paragraphs (b)(1) and (2) of this section as specified in separate FHFA guidance, or projects

(ii) Maintenance and Bank review of other project documentation in the Bank's discretion.

(4)

Sampling plan.

(b)

Long-term monitoringreliance on other governmental monitoring for certain rental projects.

(1) The compliance profiles regarding income targeting, rent, and retention period requirements of the AHP and the other programs are substantively equivalent;

(2) The entity has demonstrated and continues to demonstrate its ability to monitor the project;

(3) 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

(4) The Bank reviews the reports from the monitoring entity to confirm that they comply with the Bank's monitoring policies.

(c)

Long-term monitoring policies for rental projects.

(1)

Annual project sponsor or owner certifications; backup and other project documentation.

(i) Bank review of all annual certifications to the Bank by project sponsors or owners, other than sponsors or owners of projects that have been allocated LIHTCs, that household incomes and rents are in compliance with the commitments made in the approved AHP application during the AHP 15-year retention period, along with information on the ongoing financial viability of the project, including whether the project is current on its property taxes and loan payments, its vacancy rate, and whether it is in compliance with its commitments to other funding sources;

(ii) Bank review of back-up project documentation regarding household incomes and rents, including the rent rolls, maintained by the project sponsor or owner, except for projects that also received funds from other federal, state or local government entities whose programs meet the requirements in paragraphs (b)(1) and (2) of this section as specified in separate FHFA guidance, or projects that have been allocated LIHTC, provided that the Bank shall review any LIHTC noncompliance notices received from project owners pursuant to § 1291.15(a)(5)(ii) during the AHP 15-year retention period; and

(iii) Maintenance and Bank review of other project documentation in the Banks' discretion.

(2)

Risk factors and other monitoring

Risk factors; other monitoring.

(ii)

Risk-based sampling plan.

(d)

Annual adjustment of targeting commitments.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

§ 1291.51

Monitoring under Homeownership Set-Aside Programs.

(a)

Adoption and implementation.

(1) The AHP subsidy was provided to households meeting all applicable eligibility requirements in § 1291.42(b) and the Bank's Homeownership Set-Aside Program policies; and

(2) All other applicable eligibility requirements in § 1291.42 and the Bank's Homeownership Set-Aside Program policies are met, including that the AHP-assisted units are subject to retention agreements, as required under § 1291.15(a)(7), where the AHP subsidy was used for purchase of the unit, or for purchase of the unit in conjunction with rehabilitation.

(b)

Member certifications; back-up and other documentation.

(1) Bank review of certifications by members to the Bank, prior to disbursement of the AHP subsidy, that the subsidy will be provided in compliance with all applicable eligibility requirements in § 1291.42;

(2) Bank review of back-up documentation regarding household incomes maintained by the member; and

(3) Maintenance and Bank review of other documentation in the Bank's discretion.

(c)

Sampling plan.

Subpart FRemedial Actions for Noncompliance

§ 1291.60

Remedial actions for project noncompliance.

(a)

Scope.

(b)

Elimination of project noncompliance

Cure.

(2)

Project modification.

(c)

Reasonable collection efforts

Demand for repayment.

(2)

Settlement.

(ii) The settlement with the project sponsor or owner must be supported by 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 any factors in paragraph (c)(2)(i) of this section that were considered in reaching the settlement.

§ 1291.61

Recovery of subsidy for member noncompliance.

A Bank shall recover from a member the amount of any AHP subsidy (plus interest, if appropriate) not used in compliance with the commitments in the member's AHP application or the requirements of this part as a result of the actions or omissions of the member.

§ 1291.62

Bank reimbursement of AHP fund.

(a)

By the Bank.

(b)

By FHFA order.

(1) The Bank has failed to reimburse its AHP fund as required under paragraph (a) of this section; or

(2) The Bank has failed to recover the full amount of AHP subsidy due from a project sponsor, project owner, or member pursuant to the requirements of §§ 1291.60 and 1291.61, and has not shown that such failure is reasonably justified, considering factors such as those in § 1291.60(c)(2)(i).

§ 1291.63

Suspension and debarment.

(a)

At a Bank's initiative.

(b)

At FHFA's initiative.

§ 1291.64

Use of repaid AHP subsidies.

(a)

Use of repaid AHP subsidies for other AHP-eligible projects or households.

(b)

Re-use of repaid AHP direct subsidies in same project

(1) 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 for purchase, or for purchase in conjunction with rehabilitation, of an owner-occupied unit pursuant to an approved AHP application;

(2) The AHP direct subsidy, including any interest, was repaid to the member or project sponsor as a result of a sale, transfer, or assignment of title or deed of the unit prior to the end of the retention period to a subsequent purchaser that is not a low- or moderate-income household; and

(3) 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 for purchase, or for purchase in conjunction with rehabilitation, of an owner-occupied unit in the same project in accordance with the terms of the approved AHP application.

[83 FR 61231, Nov. 28, 2018, as amended at 87 FR 32969, June 1, 2022]

§ 1291.65

Transfer of Program administration.

Without limitation on other remedies, 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 FHFA may prescribe.

Subpart GAffordable Housing Reserve Fund

§ 1291.70

Affordable Housing Reserve Fund.

(a)

Deposits.

(b)

Use or commitment of AHP funds.

(1) AHP application alternates in the Bank's final funding round of the year for its General Fund or any Targeted Funds, if the Bank has a policy to approve alternates for funding under such Funds;

(2) Pending applications for funds under the Bank's Homeownership Set-Aside Programs, if any; and

(3) Project modifications for AHP subsidy increases approved by the Bank pursuant to the requirements of this part.

(c)

Carryover of insufficient amounts.

Pt. 1292

PART 1292COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

Sec.

Authority:

12 U.S.C. 1430, 4511(b)(2).

Source:

78 FR 2328, Jan. 11, 2013, unless otherwise noted.

§ 1292.1

Definitions.

As used in this part:

Champion Community

CICA program or Community Investment Cash Advance program

(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

(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

Housing projects

(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

Owner-occupied housing projects and economic development projects.

(i) The median income for the area, as published annually by HUD;

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) 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;

(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.

(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

Neighborhood

(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

(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

Rural area

(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

Targeted beneficiaries

(1) Geographically Defined Beneficiaries:

(i) The project is located in a neighborhood with a median income at or below the targeted income level;

(ii) 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;

(iii) 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;

(iv) 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.

(v) The project is located in an area and involves a property eligible for a Brownfield Tax Credit;

(vi) 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;

(vii) The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m-2;

(viii) The project is located in a Federally declared disaster area; or

(ix) 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:

(i) 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

(ii) 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

Targeted income level

(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:

(i) For economic development projects, incomes at or below 80 percent of the median income for the area; or

(ii) For housing projects, incomes at or below 115 percent of the median income for the area, both 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; or

(4) For advances or grants provided under any other CICA program offered by a Bank, a targeted income level established by the Bank with the prior approval of FHFA.

UDF program or Urban Development Funding program

Urban area

(1) A unit of general local government with a population of more than 25,000; or

(2) An unincorporated area within an MSA that does not qualify for housing or economic development assistance from the USDA.

USDA

§ 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

§ 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.

(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 RDF programs or UDF programs, or both, for targeted community lending using the targeted beneficiaries or targeted income levels specified in § 1292.1 of this part, without prior FHFA approval.

(4) 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.

(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.

(d)

Pricing and Availability of advances

Advances to members.

(2)

Pricing of CIP advances.

(3)

Pricing of AHP advances.

(4)

Advances to housing associate borrowers.

(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.

(6)

Discount Fund.

(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 FHHA 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]

Financial Stability Oversight Council

CHAPTER XIIIFINANCIAL STABILITY OVERSIGHT COUNCIL

Part

Page

PART 1300 [RESERVED]

Pt. 1301

PART 1301FREEDOM OF INFORMATION

Sec.

Authority:

12 U.S.C. 5322; 5 U.S.C. 552.

Source:

82 FR 55744, Nov. 24, 2017, unless otherwise noted.

§ 1301.1

General.

This subpart contains the regulations of the Financial Stability Oversight Council (the Council) implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. These regulations set forth procedures for requesting access to records maintained by the Council. These regulations should be read together with the FOIA, which provides additional information about this topic.

§ 1301.2

Information made available.

(a)

General.

(1) Information required to be published in the

Federal Register

(2) Information required to be made available for public inspection in an electronic format or, in the alternative, to be published and offered for sale (see § 1301.4); and

(3) Information required to be made available to any member of the public upon specific request (see §§ 1301.5 through 1301.12).

(b)

Right of access.

(c)

Exemptions.

(2) The Council shall withhold records or information under the FOIA only when it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or when disclosure is prohibited by law. Whenever the Council determines that full disclosure of a requested record is not possible, the Council shall consider whether partial disclosure is possible and shall take reasonable steps to segregate and release nonexempt information. Nothing in this paragraph requires disclosure of information that is otherwise exempted from disclosure under 12 U.S.C. 552(b)(3).

§ 1301.3

Publication in the Federal Register.

Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)) and subject to the limitations provided in 5 U.S.C. 552(a)(1), the Council shall state, publish and maintain current in the

Federal Register

(a) Descriptions of its central and field organization and the established places at which, the persons

from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Council; and

(e) Each amendment, revision, or repeal of matters referred to in paragraphs (a) through (d) of this section.

§ 1301.4

Public inspection.

(a)

In general.

(1) Final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Council but which are not published in the

Federal Register

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, that have been released previously to any person under 5 U.S.C. 552(a)(3) and §§ 1301.5 through 1301.12, and that the Council determines have become or are likely to become the subject of subsequent requests for substantially the same records. When the Council receives three (3) or more requests for substantially the same records, then the Council shall place those requests in front of any existing processing backlog and make the released records available in the Council's public reading room and in the electronic reading room

on the Council's Web site.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b)

Information made available online.

(c)

Redaction.

(d)

Public reading room.

(e)

Indices.

Federal Register

(2) The Council shall make the indices referred to in paragraphs (a)(5) and (e)(1) of this section available on its Web site.

§ 1301.5

Requests for Council records.

(a)

In general.

(b)

Form and content of request.

(1) The request for records shall be made in writing and submitted by mail or via the Internet and should state, both in the request itself and on any envelope that encloses it, that it comprises a FOIA request. A request that does not explicitly state that it is a FOIA request, but clearly indicates or implies that it is a request for records, may also be processed under the FOIA.

(2) If a request is sent by mail, it shall be addressed and submitted as follows: FOIA RequestFinancial Stability Oversight Council, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington DC 20220. If a request is made via the Internet, it shall be submitted as

set forth on the Council's Web site.

(3) In order to ensure the Council's ability to respond in a timely manner, a FOIA request must describe the records that the requester seeks in sufficient detail to enable Council personnel to locate them with a reasonable amount of effort. Whenever possible, the request must include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, the requester must include any file designations or descriptions for the records requested. In general, a requester is encouraged to provide more specific information about the records or types of records sought to increase the likelihood that responsive records can be located.

(4) The request shall include the name of and contact information for the requester, including a mailing address, telephone number, and, if available, an email address at which the Council may contact the requester regarding the request.

(5) For the purpose of determining any fees that may apply to processing a request, a requester shall indicate in the request whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, or other requester, as those terms are defined in § 1301.12(c), or in the alternative, state how the records released will be used. The Council shall use this information solely for the purpose of determining the appropriate fee category that applies to the requester and shall not use this information to determine whether to disclose a record in response to the request.

(6) If a requester seeks a waiver or reduction of fees associated with processing a request, then the request shall include a statement to that effect, pursuant to § 1301.12(f). Any request that does not seek a waiver or reduction of fees shall constitute an agreement of the requester to pay any and all fees (of up to $25) that may apply to the request, unless or until a request for waiver is sought and granted. The requester also may specify in the request an upper limit (of not less than $25) that the requester is willing to pay to process the request.

(i) Any request for waiver or reduction of fees should be filed together with or as part of the FOIA

request, or at a later time prior to the Council incurring costs to process the request.

(ii) A waiver request submitted after the Council incurs costs will be considered in accordance with § 1301.12(f); however, the requester must agree in writing to pay the fees already incurred if the waiver is denied.

(7) If a requester seeks expedited processing of a request, then the request must include a statement to that effect as is required by § 1301.7(c).

(c)

Request receipt; effect of request deficiencies.

(d)

Processing of request containing technical deficiency.

§ 1301.6

Responsibility for responding to requests for Council records.

(a)

In general.

(b)

Authority to grant or deny requests.

(c)

Referrals.

(1) In the case of a record originated by a federal agency subject to the FOIA, refer the responsibility for responding to the request regarding that record to the originating agency to determine whether to disclose it; and

(2) In the case of a record originated by a state agency, respond to the request after giving notice to the originating state agency and a reasonable opportunity to provide input or to assert any applicable privileges.

(d)

Notice of referral.

§ 1301.7

Timing of responses to requests for Council records.

(a)

In general.

(b)

Multitrack processing.

(2) The Council may provide a requester in its complex track with an opportunity to limit the scope of the request to qualify for faster processing within the specified limits of the simple track(s).

(c)

Requests for expedited processing.

(2)

Form and content of a request for expedited processing.

(i) A request for expedited processing shall be made in writing or via the Internet and submitted as part of the initial request for records. When a request for records includes a request for expedited processing, both the envelope and the request itself must be clearly marked Expedited Processing Requested. A request for expedited processing that is not clearly so marked, but satisfies the requirements in paragraphs (c)(2)(ii) and (iii) of this section, may nevertheless be granted.

(ii) A request for expedited processing shall contain a statement that demonstrates a compelling need for the requester to obtain expedited processing of the requested records. A compelling need may be established under the standard in either paragraph (c)(2)(ii)(A) or (B) of this section by demonstrating that:

(A) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the Council may make a reasoned determination that a delay in obtaining the requested records would pose such a threat; or

(B) With respect to a request made by a person primarily engaged in disseminating information,

urgency to inform the public concerning actual or alleged Federal Government activity. A person primarily engaged in disseminating information does not include individuals who are engaged only incidentally in the dissemination of information. The standard of urgency to inform requires that the records requested pertain to a matter of current exigency to the American general public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(iii) The requester shall certify the written statement that purports to demonstrate a compelling need for expedited processing to be true and correct to the best of the requester's knowledge and belief. The certification must be in the form prescribed by 28 U.S.C. 1746: I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].

(3)

Determinations of requests for expedited processing.

(4)

Effect of granting expedited processing.

(5)

Appeals of denials of requests for expedited processing.

(d)

Time period for responding to requests for records.

(1) Make one reasonable demand to the requester for clarifying information about the request and toll the twenty-day time period while it awaits the clarifying information; or

(2) Toll the twenty-day time period while awaiting receipt of the requester's response to the Council's request for clarification regarding the assessment of fees.

(e)

Unusual circumstances

In general.

(2)

Additional time.

(3) As used in this paragraph (e), unusual circumstances means, but only to the extent reasonably necessary to the proper processing of the particular requests:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components or component offices having substantial subject matter interest therein.

(4) Where the Council reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated. The Council may disaggregate and treat as separate requests a single request that has multiple unrelated components. The Council shall notify the requester if a request is disaggregated.

§ 1301.8

Responses to requests for Council records.

(a)

Acknowledgement of requests.

(1) A brief description of the request;

(2) The applicable request tracking number;

(3) The date of receipt of the request, as determined in accordance with § 1301.5(c); and

(4) A confirmation, with respect to any fees that may apply to the request pursuant to § 1301.12, that

the requester has sought a waiver or reduction in such fees, has agreed to pay any and all applicable fees, or has specified an upper limit (of not less than $25) that the requester is willing to pay in fees to process the request.

(b)

Initial determination to grant or deny a request

In general.

(2)

Granting of request.

(3)

Denial of requests.

(i) State the exemptions relied on in not granting the request;

(ii) If technically feasible, indicate the volume of information redacted (including the number of pages withheld in part and in full) and the exemptions under which the redaction is made at the place in the record where such redaction is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with § 1301.11 and specify the official or office to which such appeal shall be submitted; and

(v) Advise the requester of the right to seek assistance from the FOIA Public Liaison or seek dispute resolution services offered by the Office of Government Information Services.

(4)

No records found.

i.e.,

§ 1301.9

Classified information.

(a)

Referrals of requests for classified information.

(b)

Determination of continuing need for classification of information.

§ 1301.10

Requests for business information provided to the Council.

(a)

In general.

(b)

Definitions.

(1)

Business information

(2)

Submitter

(3)

Exemption 4

(c)

Designation of business information.

(d)

Notice to submitters.

(e)

When notice is required.

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Council has reason to believe that the information may be protected from disclosure under Exemption 4 because disclosure could reasonably be expected to cause substantial competitive harm to the submitter.

(f)

Opportunity to object to disclosure.

(2) When notice is given to a submitter under this section, the Council shall advise the requester that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the Council shall invite the requester to agree to an extension of time so that the Council may review the submitter's objection to disclosure.

(g)

Notice of intent to disclose.

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten (10) days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been provided to the submitter. Except as otherwise prohibited

(h)

Notice of FOIA lawsuit.

(i)

Exception to notice requirement.

(1) The Council determines that the information shall not be disclosed;

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1987 Comp., p. 235).

§ 1301.11

Administrative appeals and dispute resolution.

(a)

Grounds for administrative appeals.

(1) To deny access to records in whole or in part (as provided in § 1301.8(b)(3));

(2) To assign a particular fee category to the requester (as provided in § 1301.12(c));

(3) To deny a request for a reduction or waiver of fees (as provided in § 1301.12(f)(7));

(4) That no records could be located that are responsive to the request (as provided in § 1301.8(b)(4)); or

(5) To deny a request for expedited processing (as provided in § 1301.7(c)(5)).

(b)

Time limits for filing administrative appeals.

(c)

Form and content of administrative appeals.

(1) Be made in writing or, as set forth on the Council's Web site, via the Internet;

(2) Be clearly marked on the appeal request and any envelope that encloses it with the words Freedom of Information Act Appeal and addressed to Financial Stability Oversight Council, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220;

(3) Set forth the name of and contact information for the requester, including a mailing address, telephone number, and, if available, an email address at which the Council may contact the requester regarding the appeal;

(4) Specify the date of the initial request and date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed; and

(5) Set forth specific grounds for the appeal.

(d)

Processing of administrative appeals.

(e)

Determinations to grant or deny administrative appeals.

(1) If it is decided that the appeal is to be denied (in whole or in part) the requester shall be

(i) Notified in writing of the denial;

(ii) Notified of the reasons for the denial, including the FOIA exemptions relied upon;

(iii) Notified of the name and title or position of the official responsible for the determination on appeal;

(iv) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B); and

(v) Provided with notification that mediation services may be available to the requester as a non-exclusive alternative to litigation through the Office of Government Information Services in accordance with 5 U.S.C. 552(h)(3).

(2) If the Council grants the appeal in its entirety, the Council shall so notify the requester and promptly process the request in accordance with the decision on appeal.

(f)

Dispute resolution.

§ 1301.12

Fees for processing requests for Council records.

(a)

In general.

(b)

Fees chargeable for specific services.

(1)

Duplicating records.

(i) $0.08 per page, up to 8

1/2

(ii) Photographs, films, and other materialsactual cost of duplication.

(iii) Other types of duplication services not mentioned aboveactual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2)

Search services.

(i)

Searches for other than electronic records.

(ii)

Searches for electronic records.

i.e.,

(3)

Review of records.

i.e.,

(4)

Inspection of records in the reading room.

(5)

Other services.

(i) Certifying that records are true copies; and

(ii) Sending records by special methods (such as by express mail, etc.).

(c)

Fees applicable to various categories of requesters

Generally.

(2)

Requester selection of fee category.

(i)

Commercial.

(ii)

Educational institution.

(iii)

Non-commercial scientific institution.

(iv)

Representative of the news media.

(v)

Other requester.

(d)

Fees applicable to each category of requester.

(1)

Commercial use.

(2)

Educational and non-commercial scientific uses.

(3)

News media uses.

(4)

Other requests.

(e)

Other circumstances when fees are not charged.

(i) Services were performed without charge;

(ii) The cost of collecting a fee would be equal to or greater than the fee itself; or

(iii) The fees were waived or reduced in accordance with paragraph (f) of this section.

(2) Notwithstanding paragraphs (b), (c), and (d) of this section, the Council may not charge a requester search fees or, in the case of a requester described in paragraphs (c)(2)(ii) through (iv) of this section, duplication fees if the Council fails to comply with any time limit under § 1301.7 or §

1301.11; provided that:

(i) If unusual circumstances (as that term is defined in § 1301.7(e)) apply to the processing of the request and the Council has provided a timely notice to the requester in accordance with § 1301.7(e)(1), then a failure to comply with such time limit shall be excused for an additional ten days;

(ii) If unusual circumstances (as that term is defined in § 1301.7(e)) apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, the Council has provided a timely written notice to the requester in accordance with § 1301.7(e)(2), and the Council has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with § 1301.7(e)(2), then the Council may charge a requester such fees; and

(iii) If a court has determined that exceptional circumstances exist, then a failure to comply with such time limit shall be excused for the length of time provided by the court order.

(f)

Waiver or reduction of fees.

(i) Requests such waiver or reduction of fees in writing and submits the written request to the Council together with or as part of the FOIA request, or at a later time consistent with § 1301.5(b)(7) to process the request; and

(ii) Demonstrates that the fee reduction or waiver request is in the public interest because:

(A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Furnishing the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requester has satisfied the requirements of paragraph (f)(1)(ii)(A) of this section, the Council shall consider:

(i) The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated;

(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding;

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requester satisfies the requirement of paragraph (f)(1)(ii)(B) of this section, the Council shall consider:

(i) Any commercial interest of the requester (with reference to the definition of commercial use in paragraph (c)(2)(i) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. In the administrative process, a requester may provide explanatory information regarding this consideration; and

(ii) Whether the public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Council ordinarily shall presume that, if a news media requester satisfies the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for those records.

(5)

Determination of request to reduce or waive fees.

(6)

Effect of denying request to reduce or waive fees.

(7)

Appeals of denials of requests to reduce or waive fees.

(g)

Notice of estimated fees; advance payments.

(2) If the requester fails to state a limit and the costs are estimated to exceed $250, the requester shall be notified of the estimated costs, broken down by search, review and duplication fees, and must pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. Alternatively, the requester may reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) The Council reserves the right to request advance payment after a request is processed and before records are released.

(4) If a requester previously has failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or the pending request.

(h)

Form of payment.

(i)

Charging interest.

(j)

Aggregating requests.

PART 1310AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES

Subpart AGeneral

Subpart BDeterminations

Subpart CInformation Collection; Proposed and Final Determinations; Evidentiary Hearings

Council reevaluation and rescission of determinations.

Appendix A to Part 1310Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations

Authority:

12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5323.

Source:

77 FR 21651, Apr. 11, 2012, unless otherwise noted.

Subpart AGeneral

§ 1310.1

Authority and purpose.

(a)

Authority.

(b)

Purpose.

§ 1310.2

Definitions.

The terms used in this part have the following meanings

Board of Governors.

Commission.

Council.

Federal Insurance Office.

Foreign nonbank financial company.

(1) Incorporated or organized in a country other than the United States; and

(2) Predominantly engaged in financial activities, as that term is defined in section 102(a)(6) of the Dodd-Frank Act (12 U.S.C. 5311(a)(6)) and pursuant to any requirements for determining if a company is predominantly engaged in financial activities as established by regulation of the Board

of Governors pursuant to section 102(b) of the Dodd-Frank Act (12 U.S.C. 5311(b)), including through a branch in the United States.

Hearing date.

(1) The date on which the Council has received all of the written materials timely submitted by a nonbank financial company for a hearing that is conducted without oral testimony pursuant to § 1310.21 or § 1310.22, as applicable;

(2) The final date on which the Council or its representatives convene to hear oral testimony presented by a nonbank financial company pursuant to § 1310.21 or § 1310.22, as applicable; and

(3) The date on which the Council has received all of the written materials timely submitted by a nonbank financial company to supplement any oral testimony and materials presented by the nonbank financial company pursuant to § 1310.21 or § 1310.22, as applicable.

Member agency.

Nonbank financial company.

Office of Financial Research.

Primary financial regulatory agency.

(1) The appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), except to the extent that an institution is or the activities of an institution are otherwise described in paragraph (2), (3), (4), or (5) of this definition;

(2) The Commission, with respect to

(i) Any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) Any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) Any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) Any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) Any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) Any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) Any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) Any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) Any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) The Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) The Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201

et seq.

(xii) The Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa

et seq.

(xiii) Any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap

activities of the person that require such person to be registered under such Act;

(3) The Commodity Futures Trading Commission, with respect to

(i) Any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1

et seq.

(ii) Any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1

et seq.

(iii) Any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1

et seq.

(iv) Any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1

et seq.

(v) Any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1

et seq.

(vi) Any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1

et seq.

(vii) Any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1

et seq.

(viii) Any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1

et seq.

(ix) Any registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(4) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(5) The Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Prudential standards.

Significant companies.

U.S. nonbank financial company.

et seq.

(1) Incorporated or organized under the laws of the United States or any State; and

(2) Predominantly engaged in financial activities, as that term is defined in section 102(a)(6) of the Dodd-Frank Act (12 U.S.C. 5311(a)(6)), and pursuant to any requirements for determining if a company is predominantly engaged in financial activities as established by regulation of the Board of Governors pursuant to section 102(b) of the Dodd-Frank Act (12 U.S.C. 5311(b)).

§ 1310.3

Amendments.

The Council shall not amend or rescind appendix A to this part without providing the public with notice and an opportunity to comment in accordance with the procedures applicable to legislative rules under 5 U.S.C. 553.

[84 FR 8959, Mar. 13, 2019]

Subpart BDeterminations

§ 1310.10

Council determinations regarding nonbank financial companies.

(a)

Determinations.

(b)

Vote required.

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c)

Back-up examination by the Board of Governors.

(2) The Council shall review the results of the examination of a nonbank financial company, including its subsidiaries, conducted by the Board of Governors under this paragraph (c) in connection with any proposed or final determination under paragraph (a) of this section with respect to the nonbank financial company.

§ 1310.11

Considerations in making proposed and final determinations.

(a)

Considerations for U.S. nonbank financial companies.

(1) The extent of the leverage of the U.S. nonbank financial company and its subsidiaries;

(2) The extent and nature of the off-balance-sheet exposures of the U.S. nonbank financial company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the U.S. nonbank financial company and its subsidiaries with other significant nonbank financial companies and significant bank holding companies;

(4) The importance of the U.S. nonbank financial company and its subsidiaries as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the U.S. nonbank financial company and its subsidiaries as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such U.S. nonbank financial company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the U.S. nonbank financial company and its subsidiaries, and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the U.S. nonbank financial company and its subsidiaries;

(8) The degree to which the U.S. nonbank financial company and its subsidiaries are already regulated by 1 or more primary financial regulatory agencies;

(9) The amount and nature of the financial assets of the U.S. nonbank financial company and its subsidiaries;

(10) The amount and types of the liabilities of the U.S. nonbank financial company and its subsidiaries, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

(b)

Considerations for foreign nonbank financial companies.

(1) The extent of the leverage of the foreign nonbank financial company and its subsidiaries;

(2) The extent and nature of the United States related off-balance-sheet exposures of the foreign nonbank financial company and its subsidiaries;

(3) The extent and nature of the transactions and relationships of the foreign nonbank financial company and its subsidiaries with other significant nonbank financial companies and significant

bank holding companies;

(4) The importance of the foreign nonbank financial company and its subsidiaries as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(5) The importance of the foreign nonbank financial company and its subsidiaries as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such foreign nonbank financial company would have on the availability of credit in such communities;

(6) The extent to which assets are managed rather than owned by the foreign nonbank financial company and its subsidiaries and the extent to which ownership of assets under management is diffuse;

(7) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the foreign nonbank financial company and its subsidiaries;

(8) The extent to which the foreign nonbank financial company and its subsidiaries are subject to prudential standards on a consolidated basis in the foreign nonbank financial company's home country that are administered and enforced by a comparable foreign supervisory authority;

(9) The amount and nature of the United States financial assets of the foreign nonbank financial company and its subsidiaries;

(10) The amount and nature of the liabilities of the foreign nonbank financial company and its subsidiaries used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(11) Any other risk-related factor that the Council deems appropriate, either by regulation or on a case-by-case basis.

§ 1310.12

Anti-evasion provision.

(a)

Determinations.

(1) Material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in

(i) § 1310.11(a) if the company is incorporated or organized under the laws of the United States or any State; or

(ii) § 1310.11(b) if the company is incorporated or organized in a country other than the United States; and

(2) The company is organized or operates in such a manner as to evade the application of title I of the Dodd-Frank Act (12 U.S.C. 5311-5374) or this part.

(b)

Vote required.

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(c)

Definition of covered financial activities.

(1) Means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

(2) Includes the ownership or control of one or more insured depository institutions; and

(3) Does not include internal financial activities conducted for the company or any affiliate thereof, including

(d)

Application of other provisions.

Subpart CInformation Collection; Proposed and Final Determinations; Evidentiary Hearings

§ 1310.20

Council information collection; consultation; coordination; confidentiality.

(a)

Information collection from the Office of Financial Research, member agencies, the Federal Insurance Office, and other Federal and State financial regulatory agencies.

(b)

Information collection from nonbank financial companies.

(2) Before requiring the submission of reports under this paragraph (b) from any nonbank financial company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agency or agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agency or agencies.

(3) Before requiring the submission of reports under this paragraph (b) from a company that is a foreign nonbank financial company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such foreign nonbank financial company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) The Council may, to the extent the Council determines appropriate, accept the submission of any data, information, and reports voluntarily submitted by any nonbank financial company that is being considered for a proposed or final determination under § 1310.10(a), for the purpose of assessing the extent to which a nonbank financial company poses a threat to the financial stability of the United States.

(c)

Consultation.

(d)

International coordination.

(e)

Confidentiality

In general.

(2)

Retention of privilege.

(3)

Freedom of Information Act.

§ 1310.21

Proposed and final determinations; notice and opportunity for an evidentiary hearing.

(a)

Written notice of consideration of determination; submission of materials.

(1) Written notice that the Council is considering whether to make a proposed determination with respect to the nonbank financial company under § 1310.10(a);

(2) An opportunity to submit written materials, within such time as the Council determines to be appropriate (which shall be not less than 30 days after the date of receipt by the nonbank financial company of the notice described in paragraph (a)(1)), to the Council to contest the Council's consideration of the nonbank financial company for a proposed determination, including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States; and

(3) Notice when the Council deems its evidentiary record regarding such nonbank financial company to be complete.

(b)

Notice of proposed determination.

(c)

Evidentiary hearing.

(2) Upon receipt by the Council of a timely request under paragraph (c)(1), the Council shall fix a time (not later than 30 days after the date of receipt by the Council of the request) and place at which such nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument) to contest the proposed determination under § 1310.10(a), including materials concerning whether, in the nonbank financial company's view, material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, could pose a threat to the financial stability of the United States.

(d)

Final determination after evidentiary hearing.

(1) Determine whether to make a final determination under § 1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under § 1310.10(a), which notice shall contain a statement of the basis for the decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(e)

No evidentiary hearing requested.

(1) Determine whether to make a final determination under § 1310.10(a);

(2) Notify the nonbank financial company, in writing, of any final determination of the Council under § 1310.10(a), which notice shall contain a statement of the basis for the decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(f)

Time period for consideration.

(2) This paragraph (f) shall not limit the Council's ability to issue a subsequent written notice of consideration of determination under § 1310.21(a) to any nonbank financial company that, within 180 days after the date on which such nonbank financial company received a notice described in paragraph (a)(3) of this section, does not become subject to a proposed determination under § 1310.10(a).

§ 1310.22

Emergency exception to § 1310.21.

(a)

Exception to § 1310.21.

(1) The Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States; and

(2) The Council provides written notice of the waiver or modification under this section to the nonbank financial company as soon as practicable, but not later than 24 hours after the waiver or modification is granted. Any such notice shall set forth the manner and form for transmitting a request for an evidentiary hearing under paragraph (c) of this section.

(b)

Consultation.

(2) In making a determination under paragraph (a) of this section with respect to a foreign nonbank financial company, the Council shall consult with the appropriate home country supervisor, if any, of such foreign nonbank financial company, in such time and manner as the Council may deem appropriate.

(c)

Opportunity for evidentiary hearing.

(2) Upon receipt of a timely request for an evidentiary hearing under paragraph (c)(1), the Council shall fix a time (not later than 15 days after the date of receipt by the Council of the request) and place at which the nonbank financial company may appear, personally or through counsel, for a nonpublic evidentiary hearing at which the nonbank financial company may submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument) regarding the waiver or modification under this section.

(d)

Notice of final determination.

(1) Make a final determination regarding the waiver or modification under this § 1310.22;

(2) Notify the nonbank financial company, in writing, of the final determination of the Council regarding the waiver or modification under this § 1310.22, which notice shall contain a statement of the basis for the final decision of the Council; and

(3) If the Council makes a final determination under § 1310.10(a), publicly announce the final determination of the Council.

(e)

Vote required.

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

§ 1310.23

Council reevaluation and rescission of determinations.

(a)

Reevaluation and rescission.

(1) Reevaluate each currently effective determination made under § 1310.10(a); and

(2) Rescind any such determination, if the Council determines that the nonbank financial company no longer meets the standard under § 1310.10(a), taking into account the considerations in §

1310.11(a) or § 1310.11(b), as applicable.

(b)

Notice of reevaluation; submission of materials.

(c)

Vote required.

(1) Be made by the Council and shall not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(d)

Notice of rescission.

Pt. 1310, App. A

Appendix A to Part 1310Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations

Effective Date Note:

At 88 FR 80127, Nov. 17, 2023, appendix A to part 1310 was revised,

I. Introduction

Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)

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Section II of this document describes the approach the Council intends to take in prioritizing its work to identify and address potential risks to U.S. financial stability using an activities-based approach. This approach reflects the Council's priorities of identifying potential risks on a system-wide basis, reducing the potential for competitive distortions that could arise from entity-specific determinations, and allowing relevant financial regulatory agencies

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Section III of this appendix describes the manner in which the Council intends to apply the statutory standards and considerations in making determinations under section 113 of the Dodd-Frank Act, if the Council determines that potential risks to U.S. financial stability are not adequately addressed through the activities-based approach. Section III defines key terms used in the statute, including threat to the financial stability of the United States. Section III also includes a detailed description of the analysis that the Council intends to conduct during its reviews, including a discussion of channels through which risks from a company may be transmitted to other companies or markets, and the Council's assessment of the likelihood of the company's material financial distress and the benefits and costs of a determination.

Section IV of this appendix outlines a two-stage process that the Council will follow in non-emergency situations when determining whether to subject a nonbank financial company to Federal Reserve supervision and prudential standards. In the first stage of the process, the Council will notify the company and its primary financial regulatory agency and conduct a preliminary analysis to determine whether the company should be subject to further evaluation by the Council. During the second stage of the evaluation process, the Council will conduct an in-depth evaluation if it determines in the first stage that the nonbank financial company merits additional review.

The Council's practices set forth in this guidance to address potential risks to U.S. financial stability are intended to comply with its statutory purposes: (1) To identify risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (2) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the government will shield them from losses in the event of failure; and (3) to respond to emerging threats to the stability of the U.S. financial system.

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This interpretive guidance is not a binding rule, except to the extent that it sets forth rules of agency organization, procedure, or

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See FCC

Fox Television Stations, Inc.,

II. Activities-Based Approach

The Dodd-Frank Act gives the Council broad discretion in determining how to respond to potential threats to U.S. financial stability. A determination to subject a nonbank financial company to Federal Reserve supervision and prudential standards under section 113 of the Dodd-Frank Act is only one of several Council authorities for responding to potential risks to U.S. financial stability.

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As part of its activities-based approach, the Council will examine a range of financial products, activities, or practices that could pose risks to U.S. financial stability. These types of activities are often identified in the Council's annual reports, such as activities related to (1) the extension of credit, (2) the use of leverage or short-term funding, (3) the provision of guarantees of financial performance, and (4) other key functions critical to support the functioning of financial markets. The Council considers a risk to financial stability to mean a risk of an event or development that could impair financial intermediation or financial market functioning to a degree that would be sufficient to inflict significant damage on the broader economy. The Council's activities-based approach is intended to identify and address risks to financial stability using a two-step approach, described below.

a. Step One of Activities-Based Approach: Identifying Potential Risks From Products, Activities, or

Practices

Monitoring Markets

The Council has a statutory duty to monitor the financial services marketplace in order to identify potential threats to U.S. financial stability.

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For example, the Council's monitoring may include:

- Corporate and sovereign debt and loan markets;
- equity markets;
- markets for other financial products, including structured products and derivatives;
- short-term funding markets;
- payment, clearing, and settlement functions;
- new or evolving financial products, activities, and practices; and
- developments affecting the resiliency of financial market participants.

To monitor markets and market developments, the Council will review information such as historical data, research regarding the behavior of financial market participants, and new developments that arise in evolving marketplaces. The Council will regularly rely on data, research, and analysis from Council member agencies, the Office of Financial Research, industry participants, and other public sources. Consistent with its statutory obligations, the Council will, whenever possible, rely on information available from primary financial regulatory agencies.

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Evaluating Potential Risks

If the Council's monitoring of markets and market developments identifies a product, activity, or practice that could pose a potential risk to U.S. financial stability, the Council, in consultation with relevant financial regulatory agencies, will evaluate the potential risk to determine whether it merits

further review or action. The Council's work in this step may include efforts such as sharing data, research, and analysis among Council members and member agencies and their staffs; consultations with regulators and other experts regarding the scope of potential risks and factors that may mitigate those risks; and the collaborative development of analyses for consideration by the Council. As part of this work, the Council may also engage with industry participants and other members of the public as it assesses potential risks.

The Council will assess the extent to which characteristics such as the following could amplify potential risks to U.S. financial stability arising from products, activities, or practices:

Asset valuation risk or credit risk;

leverage, including leverage arising from debt, derivatives, off-balance sheet obligations, and other arrangements;

liquidity risk or maturity mismatch, such as reliance on funding sources that could be susceptible to dislocations;

counterparty risk and interconnectedness among financial market participants;

the transparency of financial markets, such as growth in financial transactions occurring outside of regulated sectors;

operational risks, such as cybersecurity and operational resilience; or

the risk of destabilizing markets for particular types of financial instruments, such as trading practices that substantially increase volatility in key markets.

Various factors may exacerbate or mitigate each of these types of risks. For example, activities may pose greater risks if they are complex or opaque, are conducted without effective risk-management practices, are significantly correlated with other financial products, and are either highly concentrated or significant and widespread. In contrast, regulatory requirements or market practices may mitigate risks by, for example, limiting exposures or leverage, enhancing risk-management practices, or restricting excessive risk-taking.

While the contours of the Council's initial evaluation of any potential risk will depend on the type and

scope of analysis relevant to the particular risk, the Council's analyses will generally focus on four framing questions:

1. How could the potential risk be triggered? For example, could it be triggered by sharp reductions in the valuation of particular classes of financial assets?

2. How could the adverse effects of the potential risk be transmitted to financial markets or market participants? For example, what are the direct or indirect exposures in financial markets to the potential risk?

3. What impact could the potential risk have on the financial system? For example, what could be the scale of its adverse effects on other companies and markets, and would its effects be concentrated or distributed broadly among market participants? This analysis should take into account factors such as existing regulatory requirements or market practices that mitigate potential risks.

4. Could the adverse effects of the potential risk impair the financial system in a manner that could harm the non-financial sector of the U.S. economy?

In this evaluation, the Council will consult with relevant financial regulatory agencies and will take into account existing laws and regulations that may mitigate a potential risk to U.S. financial stability. The Council will also take into account the risk profiles and business models of market participants engaging in the products, activities, or practices under evaluation, and consider available evidence regarding the potential risk. Empirical data may not be available regarding all potential risks, and the type and scope of the Council's analysis will be tailored to the potential risk under consideration.

If a product, activity, or practice creating a potential risk to financial stability is identified, the Council will work with relevant financial regulatory agencies to address the

b. Step Two of Activities-Based Approach: Working With Regulators To Address Identified Risks

If the Council identifies a potential risk to U.S. financial stability in step one of the activities-based approach, the Council will work with the relevant financial regulatory agencies at the federal and state levels to seek the implementation of appropriate actions to address the identified potential risk.

The Council will coordinate among its members and member agencies and will follow up on supervisory or regulatory actions to ensure the potential risk is adequately addressed. The goal of this step would be for existing regulators to take appropriate action, such as modifying their regulation or supervision of companies or markets under their jurisdiction in order to mitigate potential risks to U.S. financial stability identified by the Council.

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If, after engaging with relevant financial regulatory agencies, the Council believes those regulators' actions are inadequate to address the identified potential risk to U.S. financial stability, the Council has authority to make formal public recommendations to primary financial regulatory agencies under section 120 of the Dodd-Frank Act. Under section 120, the Council may provide for more stringent regulation of a financial activity by issuing nonbinding recommendations, following consultation with the primary financial regulatory agency and public notice inviting comments on proposed recommendations, to the primary financial regulatory agency to apply new or heightened standards or safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their jurisdiction.

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The authority to issue recommendations to primary financial regulatory agencies under section 120 is one of the Council's most formal tools for responding to potential risks to U.S. financial stability. The Council will make these recommendations only if it determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, U.S. financial markets, or low-income, minority, or underserved communities.

In its recommendations under section 120, the Council may suggest broad approaches to address

the risks it has identified. When appropriate, the Council may make a more specific recommendation. To promote analytical rigor and avoid duplication, before making any recommendation under section 120, the Council will ascertain whether the relevant primary financial regulatory agency would be expected to perform a cost-benefit analysis of the actions it would take in response to the Council's contemplated recommendation. In cases where the primary financial regulatory agency would not be expected to conduct such an analysis, the Council itself willprior to making a final recommendationconduct an analysis, using empirical data, to the extent available, of the benefits and costs of the actions that the primary financial regulatory agency would be expected to take in response to the contemplated recommendation. Where the

Primary financial regulatory agencies have significant experience, knowledge, and expertise that can be useful in determining the most efficient way to address a particular risk within their regulatory jurisdiction. In every case, prior to issuing a recommendation under section 120, the Council will consult with the relevant primary financial regulatory agency and provide notice to the public and opportunity for comment as required by section 120.

III. Analytic Framework for Nonbank Financial Company Determinations

If the Council's collaboration and engagement with the relevant financial regulatory agencies during the activities-based approach does not adequately address a potential threat identified by the Councilor if a potential threat to U.S. financial stability is outside the jurisdiction or authority of financial regulatory agenciesand if the potential threat identified by the Council is one that could be effectively addressed by a Council determination regarding one or more nonbank financial companies, the Council may evaluate one or more nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act, applying the analytic framework described below. This section describes the analysis the Council will conduct in general regarding individual nonbank financial companies that are considered for a potential determination, and section IV of this appendix describes the Council's process for those reviews.

a. Statutory Standards and Considerations

The Council may determine, by a vote of not fewer than two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council, that a nonbank financial company will be supervised by the Federal Reserve and be subject to prudential standards if the Council determines that (1) material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States (the First Determination Standard) or (2) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States (the Second Determination Standard, and, together with the First Determination Standard, the Determination Standards).

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Several relevant terms used in the Dodd-Frank Act are not defined in the statute. The Council intends to interpret the term company to include any corporation, limited liability company, partnership, business trust, association, or similar organization.

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The Dodd-Frank Act requires the Council to consider 10 specific considerations when determining whether a nonbank financial company satisfies either of the Determination Standards. These statutory considerations help the Council to evaluate whether one of the Determination Standards has been met:

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The extent of the leverage of the company;

the extent and nature of the off-balance-sheet exposures of the company;

the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

the importance of the company as a source of credit for households, businesses, and state and local governments and as a source of liquidity for the U.S. financial system;

the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

the degree to which the company is already regulated by one or more primary financial regulatory agencies;

the amount and nature of the financial assets of the company; and

the amount and types of the liabilities of the company, including the degree of reliance on short-term funding.

The statute also requires the Council to take into account any other risk-related factors that the Council deems appropriate. Any determination by the Council will be made based on a company-specific evaluation and an application of the standards and considerations set forth in section 113 of the Dodd-Frank Act, and taking into account qualitative and quantitative information the Council deems relevant to a particular nonbank financial company. The Council anticipates that the information relevant to an in-depth analysis of a nonbank financial company may vary based on the nonbank financial company's characteristics.

The discussion below describes how the Council will apply the Determination Standards in its evaluation of a nonbank financial company, including how the Council will take into account the

statutory considerations, and other risk-related factors that the Council will take into account. Due to the unique threat that each nonbank financial company could pose to U.S. financial stability and the nature of the inquiry required by the statutory considerations, the Council expects that its evaluations of nonbank financial companies will be firm-specific and may include quantitative and qualitative information that the Council deems relevant to a particular nonbank financial company. The transmission channels, sample metrics, and other factors set forth below are not exhaustive and may not apply to all nonbank financial companies under evaluation.

b. Transmission Channels

The Council's evaluation of any nonbank financial company under section 113 of the Dodd-Frank Act will seek to determine whether a nonbank financial company meets one of the Determination Standards described above. In its analysis of a nonbank financial company, the Council will assess how the negative effects of the company's material financial distress, or of the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could be transmitted to or affect other firms or markets, thereby causing a broader impairment of financial intermediation or of financial market functioning. Such a transmission of risk can occur through various mechanisms, or channels. The Council has identified three transmission channels as most likely to facilitate the transmission of the negative effects of a nonbank financial company's material financial distress, or of the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, to other financial firms and markets: Exposure; asset

Exposure Transmission Channel

Under this transmission channel, the Council will evaluate whether a nonbank financial company's creditors, counterparties, investors, or other market participants have direct or indirect exposure to the nonbank financial company that is significant enough to materially and adversely affect those or other creditors, counterparties, investors, or other market participants and thereby pose a threat to U.S. financial stability.

The Council expects that its analyses under the exposure transmission channel will generally

include the factors described below. The potential threat to U.S. financial stability will generally be greater if the amounts of the exposures are larger; if the terms of the transactions provide less protection for the counterparty; and if the largest counterparties include large financial institutions.

The Council also will consider a company's leverage and size. A company's leverage can amplify the risks posed by exposures, including off-balance sheet exposures, by reducing the company's ability to satisfy its obligations to creditors in the event of its material financial distress. Size is relevant to this analysis, as material financial distress at a larger nonbank financial company would generally transmit risk on a larger scale than distress at a smaller company. Size may be measured by the assets, liabilities, and capital of the firm.

As required by statute, the Council will consider the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse. The Council's analysis will recognize the distinct nature of exposure risks when the company is acting as an agent rather than as principal.

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The Council will consider the exposures that counterparties and other market participants have to a nonbank financial company arising from the company's capital markets activities. This assessment includes an evaluation of the company's relationships with other significant nonbank financial companies and significant bank holding companies. In most cases, the Council will consider factors such as the amount and nature of, and counterparties to, the company's:

Outstanding debt (regardless of term) and other liabilities (such as guaranteed investment contracts issued by an insurance company or Federal Home Loan Bank loans).

Derivatives transactions (which may be measured on the basis of gross notional amount, net fair value, or potential future exposures).

Securities financing transactions (

i.e.,

Lines of credit.

Credit-default swaps outstanding for which the company or an affiliate is the reference entity (generally focusing on single-name credit-default swaps).

Relevant metrics may include the number, size, and financial strength of a nonbank financial company's counterparties, including the proportion of its counterparties' exposure to the nonbank financial company relative to the counterparties' capital. The potential risk arising under this transmission channel depends not only on the number of counterparties that a nonbank financial company has, but also on the importance of that nonbank financial company to its counterparties and the extent to which the counterparties are interconnected with other financial firms, the financial system, and the broader economy. Therefore, the Council will focus on exposures of large financial institutions to the nonbank financial company under review. This analysis will take into account both individual counterparty exposures as well as aggregate exposures of other financial institutions to the company under review. The amount and types of other exposures that counterparties and other market participants have to a nonbank financial company is highly dependent on the nature of the company's business. The Council's analysis will take these other fact-specific considerations into account.

The Council also will consider applicable factors, including existing regulatory requirements, that may mitigate potential risks under the exposure transmission channel. For example, collateralization by high-quality, highly liquid securities, such as U.S. Treasury securities, the use of insurance funds to limit counterparty exposures, or other transactions that reallocate risk to well-capitalized entities, may reduce the potential for certain exposures to serve as a channel for the transmission of risk.

Contagion.

Asset Liquidation Transmission Channel

Under this transmission channel, the Council will consider whether a nonbank financial company holds assets that, if liquidated quickly, could pose a threat to U.S. financial stability by, for example, causing a fall in asset prices that significantly disrupts trading or funding in key markets or causes

significant losses or funding problems for other firms with similar holdings. This channel would likely be most relevant for a nonbank financial company that could be forced to liquidate assets quickly due to its funding and liquid asset profile. For example, this could be the case if a nonbank financial company relies heavily on short-term funding. The Council may also consider whether a deterioration in asset pricing or market functioning could pressure other financial firms to sell their holdings of affected assets in order to maintain adequate capital and liquidity, which, in turn, could produce a cycle of asset sales that could lead to further market disruptions. This analysis includes an assessment of any maturity mismatch at the companythe difference between the maturities of the company's assets and liabilities. A company's reliance on short-term funding to finance longer-term positions can subject the company to rollover or refinancing risk that may force it to sell assets rapidly at low market prices. The Council will also consider applicable factors that may mitigate potential risks under the asset liquidation transmission channel. As part of its analysis, the Council will consider the extent to which assets are managed rather than owned by the company.

The Council's analyses of the asset liquidation transmission channel will focus on three central factors, described below.

Liquidity of the company's liabilities.

The company's short-term financial obligations (including outstanding commercial paper).

Financial arrangements that can be terminated by counterparties and therefore become short-term (including callable debt, derivatives, securities lending, repurchase agreements, and off-balance-sheet exposures).

Long-term liabilities that may come due in a short-term period.

Financial transactions that may require the company to provide additional margin or collateral to the counterparty.

Products that allow customers rapidly to withdraw funds from the company.

Liabilities related to other collateralized borrowings and deposits.

The Council will quantitatively identify the scale of potential liquidity needs that could plausibly arise

at the company. As part of this analysis, the Council will apply counterparty and customer withdrawal rates based on historical examples and other relevant models to assess the scope of plausible withdrawals. In addition, any ability of the company or its financial regulators to impose stays on counterparty terminations or withdrawals is relevant, because it may reduce the company's liquidity needs in an event of material financial distress. The

The company's leverage and short-term debt ratios are relevant to this analysis, as high leverage and reliance on short-term funding can increase the potential for a company to be subject to sudden liquidity strains that force it rapidly to sell assets. Leverage can be measured by the ratio of assets to capital or as a measure of economic risk relative to capital. The latter measurement can better capture the effect of derivatives and other products with embedded leverage on the risk undertaken by a nonbank financial company. Comparisons of leverage to peer financial institutions can help indicate the level of risk at the company. Metrics that may be used to assess leverage include:

Total assets and total debt measured relative to total equity, which measures financial leverage.

Derivatives liabilities and off-balance sheet obligations relative to total equity, which may show how much off-balance sheet leverage a nonbank financial company may have.

Securities financing transactions and funding agreements that provide alternative sources of liquidity or operating income, which indicate the use of operating leverage.

Changes in leverage ratios, which may indicate that a nonbank financial company is increasing or decreasing its risk profile.

Liquidity of the company's assets.

Potential fire sale impacts.

The order in which a nonbank financial company may liquidate assets is a factor in the extent of any fire sale risk, but is subject to considerable uncertainties. A company could liquidate a significant portion of its highly liquid assets first, in order to reduce the likelihood that the company would be forced to liquidate illiquid assets in the event of its material financial distress. However, in the event of the company's material financial distress, a company may also be expected to seek to maintain

compliance with any applicable risk-based capital ratios and other requirements. Doing so might require a company to sell a mix of assets across a number of asset classes, rather than proceed with the sale of assets in order from most liquid to least liquid. Further, in the event of a significant market disruption, there could be a meaningful first-mover advantage to selling less-liquid assets first. For example, markets for less-liquid assets, such as private and public corporate bonds and asset-backed securities, could be prone to disruption in the event that a seller liquidated a large portion of its portfolio of those assets. Given these potential discounts, in some circumstances a company may be incentivized to sell a portion of its less-liquid assets first and to hold U.S. government securities and agency mortgage-backed securities, which tend to increase in value during a period of market turmoil. To the extent that a company's highly liquid assets are encumbered (for example, under securities financing transactions or as collateral for loans), the company would also need to sell less-liquid assets to satisfy its liquidity needs. Further, a company's holdings of liquid assets could

Critical Function or Service Transmission Channel

Under this transmission channel, the Council will consider the potential for a nonbank financial company to become unable or unwilling to provide a critical function or service that is relied upon by market participants and for which there are no ready substitutes and thereby pose a threat to U.S. financial stability. This factor is commonly referred to as substitutability. Substitutability captures the extent to which other firms could provide similar financial services in a timely manner at a similar price and quantity if a nonbank financial company withdraws from a particular market. Substitutability also captures situations in which a nonbank financial company is the primary or dominant provider of services in a market that the Council determines to be essential to U.S. financial stability. A risk under this transmission channel may be identified if a company provides a critical function or service that may not easily be substitutable. The Council's analysis will also consider applicable factors that may mitigate potential risks under the critical function or service transmission channel.

Concern about a potential lack of substitutability could be greater if a nonbank financial company and its competitors are likely to experience stress at the same time because they are exposed to the same risks. The Council may also analyze the nonbank financial company's activities and critical functions and the importance of those activities and functions to the U.S. financial system and assess how those activities and functions would be performed by the nonbank financial company or other market participants in the event of the nonbank financial company's material financial distress. The Council also will consider the substitutability of critical market functions that the company provides in the United States in the event of material financial distress of a foreign parent company.

The analysis of this channel incorporates a review of the competitive landscape for markets in which a nonbank financial company participates and for the services it provides (including the provision of liquidity to the U.S. financial system, the provision of credit to low-income, minority, or underserved communities, or the provision of credit to households, businesses and state and local governments), the ability of other firms to replace those services, and the nonbank financial company's market share. This analysis may focus on the company's market share in specific product lines and the ability of substitutes to replace a service or function provided by the company. The Council's evaluation of a nonbank financial company's market share regarding a particular product or service may include assessments of the ability of the nonbank financial company's competitors to expand to meet market needs during a period of overall stress in the financial services industry or in a weak macroeconomic environment; the costs that market participants would incur if forced to switch providers; the timeframe within which a disruption in the provision of the product or service would materially affect market participants or market functioning; and the economic implications of such a disruption.

c. Complexity and Resolvability

The potential threat a nonbank financial company could pose to U.S. financial stability may be mitigated or aggravated by the company's complexity, opacity, or resolvability. In particular, a risk may be aggravated if a nonbank financial company's resolution under ordinary insolvency regimes

could disrupt key markets or have a material adverse impact on other financial firms or markets. An evaluation of a nonbank financial company's complexity and resolvability entails an assessment of (1) the complexity of the nonbank financial company's legal, funding, and operational structure, and (2) any obstacles to the rapid and orderly resolution of the nonbank financial company:

Legal structure factors may include the number of jurisdictions the company operates in, the number of subsidiaries, and the organizational structure.

Funding structure factors may include the degree of interaffiliate dependency for liquidity and funding (such as intercompany loans or other affiliate support arrangements), payment operation (such as treasury operations), and risk-management.

Operational structure factors may include the number of employees, the number of U.S. and non-U.S. locations, and the degree of inter-company dependency in regard to financial guarantees and support arrangements, the ability to separate functions and spin off services or business lines, the complexity and resiliency of intercompany and outsourced services and arrangements in resolution, and the likelihood of preserving

Cross-border operational factors may include size and complexity of the company's cross-border operations and impact of potential ring-fencing on an orderly resolution.

Factors that would tend to increase the risk associated with a company's complexity and resolvability include large size or scope of activities; a complex legal or operational structure; multi-jurisdictional operations and regulatory regimes; complex funding structures; the potential impact of a loss of key personnel; and shared services among affiliates. The opacity of a firm's structureif the firm's structure and operations cannot readily or easily be determinedmay present an obstacle to resolution.

d. Existing Regulatory Scrutiny

As noted above, one of the considerations the Council is statutorily required to take into account in making a determination under section 113 of the Dodd-Frank Act is the degree to which the nonbank financial company is already regulated by one or more primary financial regulatory

agencies.

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The extent to which the company's primary financial regulator has imposed risk-management standards such as capital, liquidity, and reporting requirements, as relevant to the type of company, and has authority to supervise, examine, and bring enforcement actions, with respect to the company and its affiliates.

Regulators' processes for inter-regulator coordination.

For non-U.S. entities, the extent to which the company is supervised and subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority.

e. Benefits and Costs of Determination; Likelihood of Material Financial Distress

Determining whether the expected benefits of a potential Council determination justify the expected costs is necessary to ensure that the Council's actions are expected to provide a net benefit to U.S. financial stability and are consistent with thoughtful decisionmaking.

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See MetLife, Inc.

Financial Stability Oversight Council,

Michigan

Environmental Protection Agency,

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See

The key elements of regulatory analysis include (1) a statement of the need for the proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and costs

(quantitative and qualitative) of the proposed action and the main alternatives.

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Benefits.

One of the Council's statutory purposes is to respond to emerging threats to the stability of the U.S. financial system.

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Analysis of the benefits of a determination for the relevant nonbank financial company may include those arising directly from the Council's determination as well as any benefits arising from anticipated new or increased requirements resulting from the determination, such as additional supervision and enhanced capital, liquidity, or risk-management requirements. For example, a nonbank financial company subject to a Council determination may benefit from a lower cost of capital or higher credit ratings upon meeting its post-determination regulatory requirements.

Costs.

The Council will consider costs to the company arising from anticipated new or increased regulatory requirements resulting from the determination related to:

Risk-management requirements, such as the costs of capital planning and stress testing.

Supervision and examination, such as compliance costs to the firm of additional examination and supervision.

Increased capital requirements, after accounting for offsetting benefits to taxpayers and to the holders of the firm's other liabilities.

Liquidity requirements, such as the opportunity cost from any requirement to hold additional high-quality liquid assets, relative to the company's current investment portfolio.

Because the Federal Reserve is required to tailor prudential standards to a nonbank financial

company subject to a Council determination after the Council has made a determination regarding the company, the new regulatory requirements that result from the Council's determination will not be known to the Council during its analysis of the company. In cases where the nonbank financial company under review primarily engages in bank-like activities, the Council may consider, as a proxy, the costs that would be imposed on the nonbank if the Federal Reserve imposed prudential standards similar to those imposed on bank holding companies with at least $250 billion in total consolidated assets under section 165 of the Dodd-Frank Act.

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The Council also will consider the cost of a determination under section 113 of the Dodd-Frank Act to the U.S. economy by assessing the impact of the determination on the availability and cost of credit or financial products in relevant U.S. markets. To the extent that the markets in which the relevant nonbank participates have low concentration, the impact that the determination regarding one firm would have on credit conditions would generally be immaterial. However, if the relevant markets are concentrated, a Council determination regarding a significant market participant could have a material impact on credit conditions in that market. As part of this analysis, the Council may also consider the extent to which any reduction in financial services provided by the nonbank financial company under review would be offset by other market participants.

Likelihood of Material Financial Distress.

IV. The Determination Process

As described in section II above, the Council will prioritize an activities-based approach for identifying, assessing, and addressing potential risks to financial stability. However, if a potential risk or threat to U.S. financial stability cannot be adequately addressed through an activities-based approach, the Council may consider a nonbank financial company for a potential determination under section 113 of the Dodd-Frank Act. The Council anticipates it would consider a nonbank financial company for a potential determination under section 113 only in rare instances, such as if

the products, activities, or practices of a company that pose a potential threat to U.S. financial stability are outside the jurisdiction or authority of financial regulatory agencies. The Council expects generally to follow a two-stage process of evaluation and analysis, as described below.

In the first stage of the process (Stage 1), nonbank financial companies identified as potentially posing risks to U.S. financial stability will be notified and subject to a preliminary analysis, based on quantitative and qualitative information available to the Council primarily through public and regulatory sources. During Stage 1, the Council will permit, but not require, the company to submit relevant information. The Council will also consult with the primary financial regulatory agency or home country supervisor, as appropriate. This approach will enable the Council to fulfill its statutory obligation to rely whenever possible on information available through the Office of Financial Research (the OFR), Council member agencies, or the nonbank financial company's primary financial regulatory agencies before requiring the submission of reports from any nonbank financial company.

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Following Stage 1, nonbank financial companies that are selected for additional review will receive notice that they are being considered for a proposed determination that the company could pose a threat to U.S. financial stability (a Proposed Determination) and will be subject to in-depth evaluation during the second stage of review (Stage 2). Stage 2 will involve the evaluation of additional information collected directly from the nonbank financial company. At the end of Stage 2, the Council may consider whether to make a Proposed Determination with respect to the nonbank financial company. If a Proposed Determination is made by the Council, the nonbank financial company may request a hearing in accordance with section 113(e) of the Dodd-Frank Act and § 1310.21(c) of the Council's rule.

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a. Stage 1: Preliminary Evaluation of Nonbank Financial Companies

Stage 1 involves a preliminary analysis of nonbank financial companies to assess the risks they could pose to U.S. financial stability.

Identification of Company for Review in Stage 1

If, as described in section II, the Council's consultation with and any recommendations to a nonbank financial company's primary financial regulatory agency do not adequately address a potential risk identified by the Council, the Council may evaluate one or more individual nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act. The Council will vote to commence review of a nonbank financial company in Stage 1. When evaluating the potential risks associated with a nonbank financial company, the Council may consider the company and its subsidiaries together. This approach enables the Council to consider potential risks arising across the consolidated organization, while retaining the ability to make a determination regarding either the parent or any individual nonbank financial company subsidiary (or neither), depending on which entity the Council determines could pose a threat to financial stability.

Engagement With Company and Regulators in Stage 1

The Council will provide a notice to any nonbank financial company under review in Stage 1. In Stage 1, the Council will consider available public and regulatory information; in addition, a company under review in Stage 1 may submit to the Council any information it deems relevant to the Council's evaluation and may, upon request, meet with staff of Council members and member agencies who are leading the Council's analysis.

During the discussions in Stage 1 with the company, the Council intends for staff of Council members and member agencies to explain to the company the key risks that have been identified in the analysis. Because the review of the company is preliminary and continues to change until the Council makes a final determination, these identified risks may shift over time.

The Council will also consider in Stage 1 information available from relevant existing regulators of the company. Under the Dodd-Frank Act, the Council is required to consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for a determination before the Council makes any final determination with respect to such company.

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Based on the preliminary evaluation in Stage 1, the Council may vote to commence a more detailed analysis of the company by advancing the company to Stage 2, or it may decide not to evaluate the company further. If the Council determines not to advance a company that has been reviewed in Stage 1 to Stage 2, the Council will notify the company in writing of the Council's decision. The notice will clarify that a decision not to advance the company from Stage 1 to Stage 2 at that time does not preclude the Council from reinitiating review of the company in Stage 1. For example, the Council may reinitiate review of the company if material changes affecting the firm merit further evaluation.

b. Stage 2: In-Depth Evaluation

Stage 2 involves an in-depth evaluation of any company that the Council has determined merits additional review.

In Stage 2, the Council will review the relevant company using information collected directly from the nonbank financial company, through the OFR, as well as public and regulatory information. The review will focus on whether the nonbank financial company could pose a threat to U.S. financial stability because of the company's material financial distress or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company. The Council expects that the transmission channels and the other factors described above will be used to evaluate a nonbank financial company's potential to pose a threat to U.S. financial stability.

Engagement With Company and Regulators in Stage 2

Each nonbank financial company to be evaluated in Stage 2 will receive a notice (a Notice of Consideration) that the nonbank financial company is under consideration for a Proposed Determination. The Council also will submit to the company a request that the company provide information that the Council deems relevant to the Council's evaluation, and the nonbank financial company will be provided an opportunity to submit written materials to the Council.

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Information requests likely will involve both qualitative and quantitative data. Information relevant to the Council's analysis may include confidential business information such as detailed information regarding financial assets, terms of funding arrangements, counterparty exposure or position data, strategic plans, and interaffiliate transactions.

The Council will make staff representing Council members available to meet with the representatives of any company that enters Stage 2, to explain the evaluation process and the framework for the Council's analysis. If the analysis in Stage 1 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those issues, although the issues will be subject to change based on the ongoing analysis. In addition, the Council expects that its Deputies Committee

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During Stage 2 the Council will also seek to continue its consultation with the company's primary financial regulatory agency or home country supervisor in a timely manner before the Council makes any proposed or final determination with respect to such nonbank financial company. The Council will continue to encourage the regulator during the determination process to address any risks to U.S. financial stability using the regulator's existing authorities; as noted above, if the Council believes the regulator's actions adequately address the potential risks to U.S. financial stability the

Council has identified, the Council may discontinue its consideration of the firm for a potential determination under section 113 of the Dodd-Frank Act.

Before making a Proposed Determination regarding a nonbank financial company, the Council will notify the company when the Council believes that the evidentiary record regarding such nonbank financial company is complete. The Council will notify any nonbank financial company in Stage 2 if the nonbank financial company ceases to be considered for a determination. Any nonbank financial company that ceases to be considered at any time in the Council's determination process may be considered for a Proposed Determination in the future at the Council's discretion, consistent with the processes described above.

c. Proposed and Final Determination

Proposed Determination

Based on the analysis performed in Stage 2, a nonbank financial company may be considered for a Proposed Determination. A proposed determination requires a vote of two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council.

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Hearing

A nonbank financial company that is subject to a Proposed Determination may request a nonpublic hearing to contest the Proposed Determination in accordance with section 113(e) of the Dodd-Frank Act. If the nonbank financial company requests a hearing in accordance with the procedures set forth in § 1310.21(c) of the Council's rule,

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https://www.treasury.gov/initiatives/fsoc/designations/Pages/Hearing-Procedures.aspx.

Final Determination

After making a Proposed Determination and holding any requested written or oral hearing, the Council may, by a vote of not fewer than two-thirds of the voting members of the Council then serving (including an affirmative vote by the Chairperson of the Council), make a final determination that the company will be subject to supervision by the Federal Reserve and prudential standards. If the Council makes a final determination, it will provide the company with a written notice of the Council's final determination, including an explanation of the basis for the Council's decision.

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The Council does not intend to publicly announce the name of any nonbank financial company that is under evaluation prior to a final determination with respect to such company. However, if a company that is under review in Stage 1 or Stage 2 publicly announces the status of its review by the Council, the Council intends, upon the request of a third party, to confirm the status of the company's review. In addition, the Council will publicly release the explanation of the Council's basis for any nonbank financial company determination or rescission of a determination. The Council is subject to statutory and regulatory requirements to maintain the confidentiality of certain information submitted to it by a nonbank financial company or its regulators.

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see also

V. Annual Reevaluations of Nonbank Financial Company Determinations

After the Council makes a final determination regarding a company, the Council intends to encourage the company or its regulators to take steps to mitigate the potential risks identified in the Council's written explanation of the basis for its final determination. Except in cases where new material risks arise over time, if a company adequately addresses the potential risks identified in writing by the Council at the time of the final determination and in subsequent reevaluations, the Council should generally be expected to rescind its determination regarding the company.

For any nonbank financial company that is subject to a final determination, the Council is required to reevaluate the determination at least annually, and to rescind the determination if the Council determines that the company no longer meets the statutory standards for a determination. The Council may also consider a request from a company for a reevaluation before the next required annual reevaluation, in the case of an extraordinary change that materially decreases the threat the nonbank financial company could pose to U.S. financial stability.

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The Council applies the same standards of review in its annual reevaluations as the standard for an initial determination regarding a nonbank financial company: Either the company's material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could pose a threat to U.S. financial stability. If the Council determines that the company no longer meets those standards, the Council will rescind its determination.

The Council's annual reevaluations generally assess whether any material changes since the previous reevaluation and since the

Before the Council's annual reevaluation of a determination regarding a nonbank financial company, the Council will provide the company with an opportunity to meet with staff of Council members and member agencies to discuss the scope and process for the review and to present information regarding any change that may be relevant to the threat the company could pose to financial stability. Staff of Council members and member agencies will also be available to meet with the company during the annual reevaluation, at the company's request. In addition, during an annual reevaluation, a company may submit any written information to the Council the company considers relevant to the Council's analysis. During annual reevaluations, companies are encouraged to submit information regarding any changes related to the company's risk profile that mitigate the potential risks previously identified by the Council. Such changes could include updates regarding company restructurings, regulatory developments, market changes, or other factors. If the company has taken steps to address the potential risks previously identified by the Council, the Council will assess whether those risks have been adequately mitigated to merit a rescission of the determination regarding the company. If the company explains in detail potential changes it could make to its business to address the potential risks previously identified by the Council, staff of Council members and member agencies will endeavor to provide their feedback on the extent to which those changes may address the potential risks.

If a company contests the Council's determination during the Council's annual reevaluation, the Council will vote on whether to rescind the determination and provide the company, its primary financial regulatory agency, and the primary financial regulatory agency of its significant subsidiaries with a notice explaining the primary basis for any decision not to rescind the determination. If the Council does not rescind the determination, the written notice provided to the company will address each of the material factors raised by the company in its submissions to the Council contesting the determination during the annual reevaluation. The written notice from the Council will also explain in detail why the Council did not find that the company no longer met the standard for a determination under section 113 of the Dodd-Frank Act. In general, due to the sensitive nature of its analyses in

annual reevaluations, the Council may not in all cases publicly release the written findings that it provides to the company.

Finally, the Council will provide each nonbank financial company subject to a Council determination with an opportunity for an oral hearing before the Council once every five years at which the company can contest the determination.

[84 FR 71760, Dec. 30, 2019]

Pt. 1310, App. A, Nt.

Effective Date Note:

At 88 FR 80127, Nov. 17. 2023, appendix A to part 1310 was revised, effective Jan. 16, 2024. For the convenience of the user, the revised text is set forth as follows:

Appendix A to Part 1310Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations

I. Introduction

Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)

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Section II of this appendix outlines a two-stage process that the Council generally expects to follow when determining whether to subject a nonbank financial company to Federal Reserve Board supervision and prudential standards.

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II. Process for Nonbank Financial Company Determinations

Under section 113 of the Dodd-Frank Act, the Council may evaluate a nonbank financial company

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a. Overview of the Determination Process

As described in detail below, the Council expects generally to follow a two-stage process of evaluation and analysis when evaluating a nonbank financial company under section 113 of the Dodd-Frank Act. During the first stage of the process (Stage 1), a nonbank financial company identified for review will be notified as provided below and subject to a preliminary analysis, based on quantitative and qualitative information available to the Council primarily through public and regulatory sources. During Stage 1, the Council will permit, but not require, the company to submit relevant information. The Council will also consult with the company's primary financial regulatory agency

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Following Stage 1, any nonbank financial company that is selected for additional review will receive notice that it is being considered for a proposed determination that the company will be supervised by the Federal Reserve Board and be subject to prudential standards under Title I of the Dodd-Frank Act (a Proposed Determination) and that the company will be subject to in-depth evaluation during the second stage of review (Stage 2). Stage 2 will also involve the evaluation of additional information collected directly from the nonbank financial company. At the end of Stage 2, the Council may consider whether to make a Proposed Determination with respect to the nonbank financial company. If the Council makes a Proposed Determination, the nonbank financial company may request a hearing in accordance with section 113(e) of the Dodd-Frank Act and § 1310.21(c) of the Council's rule regarding nonbank financial company determinations.

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b. Stage 1: Preliminary Evaluation of Nonbank Financial Companies

Stage 1 involves a preliminary analysis of nonbank financial companies to assess the risks they could pose to U.S. financial stability. In light of the preliminary nature of a review in Stage 1, the Council expects that not all companies reviewed in Stage 1 will proceed to Stage 2 or a Final Determination.

Identification of Company for Review in Stage 1

The Council may evaluate one or more individual nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act. The Council's staff-level committees are responsible for monitoring and analyzing financial markets, financial companies, the financial system, and issues related to financial stability. These committees monitor a broad range of asset classes, institutions, and activities, as described in the Council's Analytic Framework for Financial Stability Risk Identification, Assessment, and Response (the Analytic Framework), and as reflected in the Council's annual reports. In assessing potential risks, these committees consider the vulnerabilities, types of metrics, and transmission channels described in the Analytic Framework. These committees, in the course of their duties, will monitor each sector of the financial system at least annually and will report to the Deputies Committee

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When evaluating the potential risks associated with a nonbank financial company, the Council may consider the company and its subsidiaries separately or together. This approach enables the Council to consider potential risks arising across the entire organization, while retaining the ability to

make a determination regarding either the parent or any individual nonbank financial company subsidiary (or neither), depending on which entity the Council determines could pose a threat to financial stability.

Engagement With Company and Regulators in Stage 1

The Council will provide a notice to any nonbank financial company under review in Stage 1 no later than 60 days before the Council votes on whether to evaluate the company in Stage 2. In Stage 1, the Council will consider available public and regulatory information. In order to reduce the burdens of review on the company, the Council will not require the company to submit information during Stage 1; however, a company under review in Stage 1 may submit to the Council any information relevant to the Council's evaluation and may, upon request, meet with staff of Council members and member agencies who are leading the Council's analysis. The Council may request a page-limited summary of the company's submissions. In addition, staff representing the Council will, upon request, provide the company with a list of the primary public sources of information being considered during the Stage 1 analysis, so that the company has an opportunity to understand the

The Council will also consider in Stage 1 information available from relevant existing regulators of the company. Under the Dodd-Frank Act, the Council is required to consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for a determination before the Council makes any Final Determination with respect to such company.

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Based on the preliminary evaluation in Stage 1, the Council, on a nondelegable basis, may vote to commence a more detailed analysis of the company by advancing the company to Stage 2, or it may decide not to evaluate the company further. If the Council votes not to advance a company that has been reviewed in Stage 1 to Stage 2, the Council will notify the company in writing of the Council's decision. The notice will clarify that a decision not to advance the company from Stage 1

to Stage 2 at that time does not preclude the Council from reinitiating review of the company in Stage 1.

c. Stage 2: In-Depth Evaluation

Stage 2 involves an in-depth evaluation of a nonbank financial company that the Council has determined merits additional review.

In Stage 2, the Council will review a nonbank financial company using information collected directly from the company, through the OFR, as well as public and regulatory information. The review will focus on whether material financial distress

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Engagement With Company and Regulators in Stage 2

A nonbank financial company to be evaluated in Stage 2 will receive a notice (a Notice of Consideration) that the company is under consideration for a Proposed Determination. The Council also will submit to the company a request that the company provide information that the Council deems relevant to the Council's evaluation, and the nonbank financial company will be provided an opportunity to submit written materials to the Council.

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The Council will make staff representing Council members available to meet with the representatives of any company that enters Stage 2, to explain the evaluation process and the framework for the Council's analysis. In addition, the Council expects that its Deputies Committee will grant a request to meet with a company in Stage 2 to allow the company to present any information or arguments it deems relevant to the Council's evaluation. If the analysis in Stage 1 has identified specific aspects of the company's operations or activities as the primary focus for the

evaluation, staff will notify the company of those specific aspects, although the areas of analytic focus may change based on the ongoing analysis.

During Stage 2 the Council will also seek to continue its consultation with the company's primary financial regulatory agency or home country supervisor in a timely manner before the Council makes a Proposed or Final Determination with respect to the company. The Council will continue to encourage the regulator during the determination process to address any risks to U.S. financial stability using the regulator's existing authorities; as noted above, if the Council believes regulators' or the company's actions adequately address the potential risks to U.S. financial stability the Council has identified, the Council would expect to discontinue its consideration of the company for a potential determination under section 113 of the Dodd-Frank Act.

Before making a Proposed Determination regarding a nonbank financial company, the Council will notify the company when the Council believes that the evidentiary record regarding the company is complete.

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d. Proposed and Final Determinations

Proposed Determination

Based on the analysis performed in Stage 2, a nonbank financial company may be considered for a Proposed Determination. A Proposed Determination requires a vote, on a nondelegable basis, of two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council.

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Hearing

A nonbank financial company that is subject to a Proposed Determination may request a nonpublic hearing to contest the Proposed Determination in accordance with section 113(e) of the Dodd-Frank Act and § 1310.21(c) of the Council's rule regarding nonbank financial company determinations.

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Final Determination

After making a Proposed Determination and holding any requested written or oral

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The Council does not intend to publicly announce the name of any nonbank financial company that is under evaluation prior to a Final Determination with respect to such company. However, if a company that is under review in Stage 1 or Stage 2 publicly announces the status of its review by the Council, the Council intends, upon the request of a third party, to confirm the status of the company's review. In addition, the Council will publicly release the explanation of the Council's basis for any Final Determination or rescission of a determination, following such an action by the Council. The Council is subject to statutory and regulatory requirements to maintain the confidentiality of certain information submitted to it by a nonbank financial company or its regulators.

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III. Annual Reevaluations of Nonbank Financial Company Determinations

After the Council makes a Final Determination regarding a nonbank financial company, the Council intends to encourage the company or its regulators to take steps to mitigate the potential risks identified in the Council's written explanation of the basis for its Final Determination. Except in cases where new material risks arise over time, if the potential risks identified in writing by the Council at the time of the Final Determination and in subsequent reevaluations have been adequately addressed, generally the Council would expect to rescind its determination regarding the company.

For any nonbank financial company that is subject to a Final Determination, the Council is required to reevaluate the determination at least annually, and to rescind the determination if the Council determines that the company no longer meets the statutory standards for a determination.

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The Council will apply the same standards of review in its annual reevaluations as the standards for an initial determination regarding a nonbank financial company: either material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or the mix of the company's activities, could pose a threat to U.S. financial stability. If the Council determines that the company does not meet either of those standards, the Council will rescind its determination.

The Council's annual reevaluations will generally assess whether any material changes since the previous reevaluation and since the Final Determination justify a rescission of the determination. The Council expects that its reevaluation process will focus on whether any material changes that have taken effectincluding changes at the company, changes in its markets or its regulation, changes in the impact of relevant factors, or otherwiseresult in the company no longer meeting the standards for a determination. In light of the frequent reevaluations, the Council's analyses will generally

During the Council's annual reevaluation of a determination regarding a nonbank financial company, the Council will provide the company with an opportunity to meet with representatives of the Council

to discuss the scope and process for the review and to present information regarding any change that may be relevant to the threat the company could pose to financial stability. In addition, during an annual reevaluation, the company may submit any written information to the Council the company deems relevant to the Council's analysis. During annual reevaluations, a company is encouraged to submit information regarding any changes related to the company's risk profile that mitigate the potential risks previously identified by the Council. Such changes could include updates regarding company restructurings, regulatory developments, market changes, or other factors. If the company or its regulators have taken steps to address the potential risks previously identified by the Council, the Council will assess whether the risks have been adequately mitigated to merit a rescission of the determination regarding the company. If the company explains in detail and in a timely manner potential changes it could make to its business to address the potential risks previously identified by the Council, representatives of the Council will endeavor to provide their feedback on the extent to which those changes may address the potential risks.

If a company contests the Council's determination during the Council's annual reevaluation, the Council will vote on whether to rescind the determination and provide the company, its primary financial regulatory agency or home country supervisor, and the primary financial regulatory agency of its significant subsidiaries with a notice explaining the primary basis for any decision not to rescind the determination. If the Council does not rescind the determination, the written notice provided to the company will address the most material factors raised by the company in its submissions to the Council contesting the determination during the annual reevaluation. The written notice from the Council will also explain why the Council did not find that the company no longer met the standard for a determination under section 113 of the Dodd-Frank Act. In general, due to the sensitive, company-specific nature of its analyses in annual reevaluations, the Council generally would not publicly release the written findings that it provides to the company, although the Council does not expect to restrict a company's ability to disclose such information.

Finally, the Council will provide each nonbank financial company subject to a Council determination

an opportunity for an oral hearing before the Council once every five years at which the company can contest the determination.

Pt. 1320

PART 1320DESIGNATION OF FINANCIAL MARKET UTILITIES

Subpart AGeneral

Sec.

1320.1

Authority and purpose.

1320.2

Definitions.

Subpart BConsultations, Determinations and Hearings

1320.10

Factors for consideration in designations.

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Consultation with financial market utility.

1320.12

Advance notice of proposed determination

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Council determination regarding systemic importance.

1320.14

Emergency exception.

1320.15

Notification of final determination regarding systemic importance.

1320.16

Extension of time periods.

Subpart CInformation Collection

1320.20

Council information collection and coordination.

Authority:

12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5463; 12 U.S.C. 5468; 12 U.S.C. 5469

Source:

76 FR 44773, July 27, 2011, unless otherwise noted.

Subpart AGeneral

§ 1320.1

Authority and purpose.

(a)

Authority.

(b)

Purpose.

§ 1320.2

Definitions.

The terms used in this part have the following meanings:

Appropriate Federal banking agency.

appropriate Federal banking agency

Board of Governors.

Board of Governors

Council.

Council

Designated clearing entity.

designated clearing entity

Designated financial market utility.

designated financial market utility

Financial institution.

financial institution

(1) Means

(i) A depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) A branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(iii) An organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601-604a and 611 through 631);

(iv) A credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(v) A broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(vi) An investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

(vii) An insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2);

(viii) An investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2);

(ix) A futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(x) Any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Does not include designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C.

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et seq.

et seq.

Financial market utility.

(1) Means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person; and

(2) Does not include

(i) Designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1

et seq.

et seq.

(ii) Any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

Hearing date.

(1) The date on which the Council receives all of the written materials timely submitted by the financial market utility for a hearing that is conducted without oral testimony; or

(2) The final date on which the Council convenes for the financial market utility to present oral testimony.

Payment, clearing, or settlement activity.

(1) The term payment, clearing, or settlement activity means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions, but shall not include any

offer or sale of a security under the Securities Act of 1933 (15 U.S.C. 77a

et seq.

(2) For purposes of paragraph (1) of this definition, the term financial transaction includes

(i) Funds transfers;

(ii) Securities contracts;

(iii) Contracts of sale of a commodity for future delivery;

(iv) Forward contracts;

(v) Repurchase agreements;

(vi) Swaps;

(vii) Security-based swaps;

(viii) Swap agreements;

(ix) Security-based swap agreements;

(x) Foreign exchange contracts;

(xi) Financial derivatives contracts; and

(xii) Any similar transaction that the Council determines to be a financial transaction for purposes of this part.

(3) When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include

(i) The calculation and communication of unsettled financial transactions between counterparties;

(ii) The netting of transactions;

(iii) Provision and maintenance of trade, contract, or instrument information;

(iv) The management of risks and activities associated with continuing financial transactions;

(v) Transmittal and storage of payment instructions;

(vi) The movement of funds;

(vii) The final settlement of financial transactions; and

(viii) Other similar functions that the Council may determine.

(4) Payment, clearing, and settlement activities shall not include public reporting of swap transactions under section 727 or 763(i) of the Dodd-Frank Act.

Supervisory Agency.

(i) Has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws as follows

(A) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission;

(B) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission;

(C) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act;

(D) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in

(ii) Would have primary jurisdiction over a financial market utility if the financial market utility were a designated financial market utility under paragraph (1) of this definition.

(2) If a financial market utility is subject to the jurisdictional supervision of more than one agency listed in paragraph (1) of this definition, then such agencies should agree on one agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which is the Supervisory Agency for purposes of this part.

Systemically important and systemic importance.

Subpart BConsultations, Determinations and Hearings

§ 1320.10

Factors for consideration in designations.

In making any proposed or final determination with respect to whether a financial market utility is, or is likely to become, systemically important under this part, the Council shall take into consideration:

(a) The aggregate monetary value of transactions processed by the financial market utility, including without limitation

(1) The number of transactions processed, cleared or settled;

(2) The value of transactions processed, cleared or settled; and

(3) The value of other financial flows.

(b) The aggregate exposure of the financial market utility to its counterparties, including without limitation

(1) Credit exposures, which includes but is not limited to potential future exposures; and

(2) Liquidity exposures.

(c) The relationship, interdependencies, or other interactions of the financial market utility with other financial market utilities or payment, clearing, or settlement activities, including without limitation interactions with different types of participants in those utilities or activities.

(d) The effect that the failure of or a disruption to the financial market utility would have on critical markets, financial institutions, or the broader financial system, including without limitation

(1) Role of the financial market utility in the market served;

(2) Availability of substitutes;

(3) Concentration of participants;

(4) Concentration by product type;

(5) Degree of tiering; and

(6) Potential impact or spillover in the event of a failure or disruption.

(e) Any other factors that the Council deems appropriate.

§ 1320.11

Consultation with financial market utility.

Before providing a financial market utility notice of a proposed determination under § 1320.12, the Council shall provide the financial market utility with

(a) Written notice that the Council is considering whether to make a proposed determination with

respect to the financial market utility under § 1320.13; and

(b) An opportunity to submit written materials to the Council, within such time as the Council determines to be appropriate, concerning

(1) Whether the financial market utility is systemically important taking into consideration the factors set out in § 1320.10; and

(2) Proposed changes by the financial market utility that could

(i) Reduce or increase the inherent systemic risk the financial market utility poses and the need for designation under § 1320.13; or

(ii) Reduce or increase the appropriateness of rescission under § 1320.13.

(3) The Council shall consider any written materials timely submitted by the financial market utility under this section before making a proposed determination under section 1320.13.

§ 1320.12

Advance notice of proposed determination.

(a)

Notice of proposed determination and opportunity for hearing.

(b)

Request for hearing.

(c)

Written submissions.

§ 1320.13

Council determination regarding systemic importance.

(a)

Designation determination.

(b)

Rescission determination.

(c)

Vote required.

(1) Be made by the Council and must not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(d)

Consultations.

§ 1320.14

Emergency exception.

(a)

Emergency exception.

(1) The Council determines that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility; and

(2) The Council provides notice of the waiver or modification, and an explanation of the basis for the waiver or modification, to the financial market utility concerned, as soon as practicable, but not later than 24 hours after the waiver or modification.

(b)

Vote required.

(1) Be made by the Council; and

(2) Require the affirmative vote of not fewer than two-thirds of members then serving, including the affirmative vote of the Chairperson of Council.

(c)

Request for hearing.

(d)

Written submissions.

(e)

Notification of hearing determination.

§ 1320.15

Notification of final determination regarding systemic importance.

(a)

Notification of final determination after a hearing.

(b)

Notification of final determination if no hearing.

§ 1320.16

Extension of time periods.

The Council may extend any time period established in § 1320.12, § 1320.14, or § 1320.15 as the Council determines to be necessary or appropriate.

Subpart CInformation Collection

§ 1320.20

Council information collection and coordination.

(a)

Information collection to assess systemic importance.

(b)

Prerequisites to information collection.

(1) Determine that it has reasonable cause to believe that the financial market utility is, or is likely to become, systemically important, considering the standards set out in § 1320.10; or

(2) Determine that it has reasonable cause to believe that the designated financial market utility is no longer, or is no longer likely to become, systemically important, considering the standards set out in § 1320.10; and

(3) Coordinate with the Supervisory Agency for the financial market utility to determine if the information is available from, or may be obtained by, the Supervisory Agency in the form, format, or detail required by the Council.

(c)

Timing of response from the appropriate Supervisory Agency.

(d)

Notice to financial market utility of information collection requirement.

(1) Written notice that the Council is considering whether to make a proposed determination under § 1320.12; and

(2) A description of the basis for the Council's belief under paragraphs (b)(1) or (b)(2) of this section.

PARTS 1321-1399 [RESERVED]

CHAPTER XIVFARM CREDIT SYSTEM INSURANCE CORPORATION

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Premiums

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Rules of practice and procedure

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Golden parachute and indemnification payments

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1413-1499

[Reserved]

Pt. 1400

PART 1400ORGANIZATION AND FUNCTIONS

Subpart AOrganization and Functions

Sec.

1400.1

Farm Credit System Insurance Corporation.

1400.2

Board of Directors of the Farm Credit System Insurance Corporation.

1400.3

Organization of the Farm Credit System Insurance Corporation.

Subpart B [Reserved]

Authority:

12 U.S.C. 2277a-5; 12 U.S.C. 2277a-7.

Source:

55 FR 36610, Sept. 6, 1990, unless otherwise noted.

Subpart AOrganization and Functions

§ 1400.1

Farm Credit System Insurance Corporation.

The Farm Credit System Insurance Corporation (Corporation) was created by sections 5.52 and 5.58 of the Farm Credit Act of 1971 (Act) to carry out the responsibilities set out in part E of title V of the Act, including insuring the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Farm Credit Act on behalf of one or more Farm Credit System banks.

§ 1400.2

Board of Directors of the Farm Credit System Insurance Corporation.

The Board of Directors of the Farm Credit System Insurance Corporation is entrusted with the responsibility to manage the Corporation. The Board of Directors consists of the members of the Farm Credit Administration Board. The Chairman of the Corporation is elected by the members of the Board.

§ 1400.3

Organization of the Farm Credit System Insurance Corporation.

Officers of the Corporation shall be appointed by the Board of Directors of the Corporation. Current information on the organization of the Corporation may be obtained from the Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102-0826.

Subpart B [Reserved]

Pt. 1401

PART 1401EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority:

5 U.S.C. 7301; 12 U.S.C. 2277a-7.

§ 1401.1

Cross-references to employee ethical conduct standards and financial disclosure regulations.

Board members, officers, and other employees of the Farm Credit System Insurance Corporation are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Farm Credit System Insurance Corporation regulation at 5 CFR part 4001, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[60 FR 30778, June 12, 1995]

Pt. 1402

PART 1402RELEASING INFORMATION

Subpart A [Reserved]

Subpart BAvailability of Records of the Farm Credit System Insurance Corporation

Sec.

Subpart CFees for Provision of Information

Authority:

Secs. 5.58, 5.59 of Pub. L. 92-181, 85 Stat. 583 (12 U.S.C. 2277a-7, 2277a-8); 5 U.S.C. 552; 52 FR 10012; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Source:

59 FR 24638, May 12, 1994, unless otherwise noted.

Subpart A [Reserved]

Subpart BAvailability of Records of the Farm Credit System Insurance Corporation

§ 1402.10

Official records of the Farm Credit System Insurance Corporation.

(a) The Farm Credit System Insurance Corporation shall, upon any request for records which reasonably describes them and is made in accordance with the provisions of this subpart, make the

records available as promptly as practicable to any person, except exempt records, which include the following:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Farm Credit System Insurance Corporation, including matters which are for the guidance of agency personnel;

(3) Records which are specifically exempted from disclosure by statute;

(4) Trade secret, commercial, proprietary, or financial information obtained from any person or organization and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Farm Credit System Insurance Corporation or in litigation in which the United States, as a real party in interest on behalf of the Farm Credit System Insurance Corporation, is a party;

(6) Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual; and

(8) Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit System institutions and that are prepared by, on behalf of, or for the use of the Farm Credit System Insurance Corporation.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

§ 1402.11

Current index.

The Farm Credit System Insurance Corporation will make available for public inspection and copying a current index to provide identifying information as to any matter required by 5 U.S.C. 552(a)(2)(C) to be made available or published in the

Federal Register.

Federal

§ 1402.12

Identification of records requested.

A member of the public who requests records from the Farm Credit System Insurance Corporation shall provide a reasonable description of the records sought including, where possible, specific information as to dates, titles, and subject matter, so that such records may be located without undue search or inquiry. If a record is not identified by a reasonable description, the request therefor may be denied.

§ 1402.13

Request for records.

Requests for records shall be in writing and addressed to the attention of the Freedom of Information Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102. A request improperly addressed will be deemed not to have been received for purposes of the 20-day time period set forth in § 1402.14(a) of this part until it is received, or would have been received, by the Freedom of Information Officer, with the exercise of due diligence by Corporation personnel. Records requested in conformance with this subpart and which are not exempt records may be received in person or by mail as specified in the request. Records to be received in person will be available for inspection or copying during business hours on a regular business day in the office of the Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia, 22102.

[62 FR 49593, Sept. 23, 1997]

§ 1402.14

Response to requests for records.

(a) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extensions thereof as provided in paragraph (d) of this section, of the receipt of a request by the Freedom of Information Officer, the Freedom of Information Officer shall determine whether to comply with or deny such a request and transmit a written notice thereof to the requester.

(b) Within 90 days of the receipt of a notice denying, in whole or in part, a request for records, the requester may appeal the denial. The appeal shall be in writing addressed to the Chief Financial Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102, and both the letter and envelope shall clearly be marked FOIA Appeal. An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in paragraph (c) of this section until it is received, or would have been received with the exercise of due diligence by Farm Credit System Insurance Corporation personnel. You also have the right to seek dispute resolution services from the Corporation's FOIA Public Liaison, McLean, Virginia 22102, and the Office of

Government Information Services, National Archives and Records Administration, 8601 Adelphi RoadOGIS, College Park, Maryland 20740-6001.

(c) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of an appeal, the Farm Credit System Insurance Corporation shall act upon the appeal and place a notice of the determination thereof in writing in the mail addressed to the requester. If the determination on the appeal upholds in whole or in part the denial of the request for records, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted that person's administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(d) In unusual circumstances, the 20-day time limit prescribed in paragraphs (a) and (c) of this section, or both, may be extended by the Freedom of Information Officer or, in the case of an appeal, by the General Counsel, provided that the total of all extensions does not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph,

unusual circumstances

(1) The need to search for and collect the requested records from facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject matter interest therein.

(e) A requester may obtain, upon request, expedited processing of a request for records when the requester demonstrates a compelling need for the information. The Freedom of Information Officer will notify the requester within 10 calendar days after receipt of such a request whether the Corporation granted expedited processing. If expedited processing was granted, the request will be processed as soon as practicable.

(1) For the purposes of this paragraph,

compelling need

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A requester shall demonstrate a compelling need by a statement certified by the requester to be true and correct to the best of such person's knowledge and belief.

(3) The procedures of this paragraph (e) for expedited processing apply to both requests for information and to administrative appeals.

[59 FR 24638, May 12, 1994, as amended at 62 FR 49593, Sept. 23, 1997; 81 FR 59438, Aug. 30, 2016]

§ 1402.15

Business information.

(a) Business information provided to the Farm Credit System Insurance Corporation by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The requirements of this section shall not apply if:

(1) The Farm Credit System Insurance Corporation determines that the information should not be

disclosed;

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

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(b) For the purpose of this section, the following definitions shall apply.

(1)

Business information

(2)

Business submitter

(3)

Requester

(c)(1) The Freedom of Information Officer shall, to the extent permitted by law, provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (c)(1) of this section, the Freedom of Information Officer shall notify the requester that the request

(d)(1) The Farm Credit System Insurance Corporation shall provide a business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit System Insurance Corporation has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(2) Notice of a request for business information falling within paragraph (d)(1)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business

submitter requests and provides acceptable justification for a specific notice period of greater duration.

(3) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit System Insurance Corporation shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm Credit System Insurance Corporation with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit System Insurance Corporation shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit System Insurance Corporation decides to disclose business information over the objection of a business submitter, the Freedom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is

intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit System Insurance Corporation shall promptly notify the business submitter of such action.

Subpart CFees for Provision of Information

§ 1402.20

Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a)

Commercial use request

(b)

Direct costs

(c)

Educational institution

(d)

Noncommercial scientific institution

(e)

Representative of the news media

news

(f)

Reproduce

reproduction

(g)

Review

(h)

Search

§ 1402.21

Categories of requestersfees.

There are four categories of requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit System Insurance Corporation shall charge fees for records requested by or on behalf of educational institutions and noncommercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a noncommercial scientific institution).

(b) The Farm Credit System Insurance Corporation shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit System Insurance Corporation shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 1402.26, commercial use requesters may be charged the costs of

searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit System Insurance Corporation shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b), or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 1402.26, requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word

pages

1/2

(f) For purposes of paragraph (d) of this section, the term

search time

§ 1402.22

Fees to be charged.

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for, reproducing, and reviewing documents that are responsive to a request for information.

(b) Manual searches for records will be charged at the salary rate(s) (i.e., basic pay plus 16 percent of that rate) of the employee(s) making the search.

(c) Computer searches for records will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the Farm Credit System Insurance Corporation for the type and

amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as a right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(d) Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Farm Credit System Insurance Corporation analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(e) Records will be reproduced at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of producing the document(s) shall be charged.

(f) The Farm Credit System Insurance Corporation will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Farm Credit System Insurance Corporation.

(h) We will not assess fees if we fail to comply with any time limit under the FOIA or these regulations, and have not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely, written notice is given to the requester, we may be excused an additional 10 working days before fees are automatically waived under this

paragraph (h).

(i) If we determine that unusual circumstances apply and more than 5,000 pages are necessary to respond to a request, we may charge fees if we provided a timely, written notice to the requester and discussed with the requester via mail, Email, or telephone (or made at least three good faith attempts to do so) how the requester could effectively limit the scope of the request.

(j) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

(k) A receipt for fees paid will be given upon request.

[59 FR 24638, May 12, 1994, as amended at 81 FR 59438, Aug. 30, 2016]

§ 1402.23

Waiver or reduction of fees.

(a) The Farm Credit System Insurance Corporation may grant a waiver or reduction of fees if the Farm Credit System Insurance Corporation determines that the 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 Government, and the disclosure of the information is not primarily in the commercial interest of the requester.

(b) The Farm Credit System Insurance Corporation will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the cost of collecting a fee are the administrative costs of receiving and recording a requester's remittance and processing the fee.

§ 1402.24

Advance paymentsnotice.

(a) Where it is anticipated that the fees chargeable will amount to more than $25 and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof that can be readily

estimated.

(b) If the anticipated fees exceed $250 and if the requester has a history of promptly paying fees charged in connection with information requests, the Farm Credit System Insurance Corporation may obtain satisfactory assurances that the requester will fully pay the fees anticipated.

(c) If the anticipated fees exceed $250 and if the requester has no history of paying fees charged in connection with information requests, the Farm Credit System Insurance Corporation may require an advance payment of fees in an amount up to the full amount anticipated.

(d) If the requester has previously failed to pay a fee charged within 30 days of the date of a billing for fees charged in connection with information requests, the Farm Credit System Insurance Corporation may require the requester to pay the fees owed, plus interest, or demonstrate that the full amount owed has been paid, and require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or a pending request from that requester.

(e) The notice of the amount of an anticipated fee or a request for an advance deposit shall include an offer to the requester to confer with identified Farm Credit System Insurance Corporation personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

§ 1402.25

Interest.

The Farm Credit System Insurance Corporation may begin charging interest on unpaid fees, starting on the 31st day following the day on which the bill for such fees was sent. Interest will not accrue if payment of the fees has been received by the Farm Credit System Insurance Corporation, even if said payment has not been processed. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, and will accrue from the day on which the bill for such fees was sent.

§ 1402.26

Charges for unsuccessful searches or reviews.

The Farm Credit System Insurance Corporation may assess charges for time spent searching for records on behalf of requesters in the categories provided for in § 1402.21 (c) and (d), even if there are no records that are responsive to the request or there is ultimately no disclosure of records. The Farm Credit System Insurance Corporation may assess charges for time spent reviewing records for requesters in the category provided for in § 1402.21(c) even if the records located are determined to be exempt from disclosure.

§ 1402.27

Aggregating requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Farm Credit System Insurance Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into

Pt. 1403

PART 1403PRIVACY ACT REGULATIONS

Sec.

Authority:

Secs. 5.58, 5.59 of the Farm Credit Act (12 U.S.C. 2277a-7, 2277a-8); 5 U.S.C. app. 3, 5 U.S.C. 552a.

Source:

59 FR 53084, Oct. 21, 1994, unless otherwise noted.

§ 1403.1

Purpose and scope.

(a) This part is published by the Farm Credit System Insurance Corporation pursuant to the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) which requires each Federal agency to promulgate rules to establish procedures for notification and disclosure to an individual of agency records pertaining to that person, and for review of such records.

(b) The records covered by this part include:

(1) Personnel and employment records maintained by the Farm Credit System Insurance

Corporation not covered by §§ 293.101 through 293.108 of the regulations of the Office of Personnel Management (5 CFR 293.101 through 293.108); and

(2) Other records contained in record systems maintained by the Farm Credit System Insurance Corporation.

(c) This part does not apply to any records maintained by the Farm Credit System Insurance Corporation in its capacity as a receiver or conservator.

§ 1403.2

Definitions.

For the purposes of this part:

(a)

Agency

(b)

Individual

(c)

Maintain

(d)

Record

(e)

Routine use

(f)

Statistical record

(g)

System of records

§ 1403.3

Procedures for requests pertaining to individual records in a record system.

(a) Any present or former employee of the Farm Credit System Insurance Corporation seeking

access to that person's official civil service records

(b) Individuals shall submit their requests in writing to the Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, when seeking to obtain the following information from the Farm Credit System Insurance Corporation:

(1) Notification of whether the agency maintains a record pertaining to that person in a system of records;

(2) Notification of whether the agency has disclosed a record for which an accounting of disclosure is required to be maintained and made available to that person;

(3) A copy of a record pertaining to that person or the accounting of its disclosure; or

(4) The review of a record pertaining to that person or the accounting of its disclosure.

The request shall state the full name and address of the individual, and identify the system or systems of records believed to contain the information or record sought.

§ 1403.4

Times, places, and requirements for identification of individuals making requests.

The individual making written requests for information or records ordinarily will not be required to verify that person's identity. The signature upon such requests shall be deemed to be a certification by the requester that he or she is the individual to whom the record pertains, or the parent of a minor, or the duly appointed legal guardian of the individual to whom the record pertains. The Privacy Act Officer, however, may require such additional verification of identity in any instance in which the Privacy Act Officer deems it advisable.

§ 1403.5

Disclosure of requested information to individuals.

(a) The Privacy Act Officer shall, within a reasonable period of time after the date of receipt of a request for information of records:

(1) Determine whether or not such request shall be granted;

(2) Notify the requester of the determination, and, if the request is denied, of the reasons therefor;

and

(3) Notify the requester that fees for reproducing copies of records may be charged as provided in § 1403.10.

(b) If access to a record is denied because the information therein has been compiled by the Farm Credit System Insurance Corporation in reasonable anticipation of a civil or criminal action proceeding, the Privacy Act Officer shall notify the requester of that person's right to judicial appeal under 5 U.S.C. 552a(g).

(c)(1) If access to a record is granted, the requester shall notify the Privacy Act Officer whether the requested record is to be copied and mailed to the requester or whether the record is to be made available for personal inspection.

(2) A requester who is an individual may be accompanied by an individual selected by the requester when the record is disclosed, in which case the requester may be required to furnish a written statement authorizing the discussion of the record in the presence of the accompanying person.

(d) If the record is to be made available for personal inspection, the requester shall arrange with the Privacy Act Officer a mutually agreeable time in the offices of the Farm Credit System Insurance Corporation for inspection of the record.

§ 1403.6

Special procedures for medical records.

Medical records in the custody of the Farm Credit System Insurance Corporation which are not subject to Office of Personnel Management regulations shall be disclosed either to the individual to whom they pertain or that person's authorized or legal representative or to a licensed physician named by the individual.

§ 1403.7

Request for amendment to record.

(a) If, after disclosure of the requested information, an individual believes that the record is not accurate, relevant, timely, or complete, that person may request in writing that the record be

amended. Such a request shall be submitted to the Privacy Act Officer and shall identify the system of

(b) The Privacy Act Officer shall acknowledge receipt of the request within 10 days (excluding Saturdays, Sundays, and legal holidays) and, if a determination has not been made, advise the individual when that person may expect to be advised of action taken on the request. The acknowledgment may contain a request for additional information needed to make a determination.

§ 1403.8

Agency review of request for amendment of record.

Upon receipt of a request for amendment of a record, the Privacy Act Officer shall:

(a) Correct any portion of a record which the individual making the request believes is not accurate, relevant, timely, or complete and thereafter inform the individual in writing of such correction, or

(b) Inform the individual in writing of the refusal to amend the record and of the reasons therefor, and advise that the individual may appeal such determination as provided in § 1403.9.

§ 1403.9

Appeal of an initial adverse determination of a request to amend a record.

(a) Not more than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt by an individual of an adverse determination on the individual's request to amend a record or otherwise, the individual may appeal to the Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

(b) The appeal shall be by letter, mailed or delivered to the Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826. The letter shall identify the records involved in the same manner they were identified to the Privacy Act Officer, shall specify the dates of the request and adverse determination, and shall indicate the expressed basis for that determination. Also, the letter shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) The review shall be completed and a final determination made by the Chief Operating Officer not

later than 30 days (excluding Saturdays, Sundays, and legal holidays) from receipt of the request for such review, unless the Chief Operating Officer extends such 30-day period for good cause. If the 30-day period is extended, the individual shall be notified of the reasons therefor.

(d) If the Chief Operating Officer refuses to amend the record in accordance with the request, the individual shall be notified of the right to file a concise statement setting forth that person's disagreement with the final determination and that person's right under 5 U.S.C. 552a(g)(1)(A) to a judicial review of the final determination.

(e) If the refusal to amend a record as requested is confirmed, there shall be included in the disputed portion of the record a copy of the concise statement filed by the individual together with a concise statement of the reasons for not amending the record as requested. Such statements will be included when disclosure of the disputed record is made to persons and agencies as authorized under 5 U.S.C. 552a.

§ 1403.10

Fees for providing copies of records.

Fees for providing copies of records shall be charged in accordance with §§ 1402.22 and 1402.24 of this chapter.

§ 1403.11

Criminal penalties.

Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning any individual from an agency under false pretenses. Sections 552a(i) (1) and (2) of the Act (5 U.S.C. 552a(i) (1), (2)) provide penalties for violation by agency employees of the Act or regulations established thereunder.

§ 1403.12

Exemptions.

Specific.

Personnel Security FilesFCSIC.

Pt. 1408

PART 1408COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart AAdministrative Collection of Claims

Sec.

Subpart COffset Against Salary

1408.35

Purpose.

1408.36

Applicability of regulations.

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1408.43

Nonwaiver of rights by payments.

Authority:

Sec. 5.58 of the Farm Credit Act (12 U.S.C. 2277a-7); 31 U.S.C. 3701-3719; 5 U.S.C. 5514; 4 CFR parts 101-105; 5 CFR part 550.

Source:

59 FR 24899, May 13, 1994, unless otherwise noted.

Subpart AAdministrative Collection of Claims

§ 1408.1

Authority.

The regulations of this part are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701-3719 and 5 U.S.C. 5514, and in conformity with the joint regulations issued under that Act by the General Accounting Office and the Department of Justice (joint regulations) prescribing standards for administrative collection, compromise, suspension, and termination of agency collection actions, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims for money or property owed to the United States (4 CFR parts 101-105).

§ 1408.2

Applicability.

This part applies to all claims of indebtedness due and owing to the United States and collectible under procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982. The joint regulations and this part do not apply to conduct in violation of antitrust laws, tax claims, claims between Federal agencies, or to any claim which appears to involve fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, unless the Justice Department authorizes the Farm Credit System Insurance Corporation, pursuant to 4 CFR 101.3, to handle the claim in accordance with the provisions of 4 CFR parts 101 through 105. Additionally, this part does not apply to Farm Credit System Insurance Corporation's premiums regulations under part 1410 of this chapter.

§ 1408.3

Definitions.

In this part (except where the term is defined elsewhere in this part), the following definitions shall apply:

(a)

Administrative offset

offset,

(b)

Agency

(c)

Claim

debt

(d)

Claim certification

(e)

Corporation

(f)

Creditor agency

(g)

Debtor

(h)

Hearing official

(i)

Paying agency

(j)

Salary offset

§ 1408.4

Delegation of authority.

The Corporation official(s) designated by the Chairman of the Farm Credit System Insurance Corporation are authorized to perform all duties which the Chairman is authorized to perform under these regulations, the Federal Claims Collection Act of 1966, as amended, and the joint regulations issued under that Act.

§ 1408.5

Responsibility for collection.

(a) The collection of claims shall be aggressively pursued in accordance with the provisions of the Federal Claims Collection Act of 1966, as amended, the joint regulations issued under that Act, and these regulations. Debts owed to the United States, together with charges for interest, penalties, and administrative costs, should be collected in one lump sum unless otherwise provided by law. If a debtor requests installment payments, the debtor, as requested by the Corporation, shall provide sufficient information to demonstrate that the debtor is unable to pay the debt in one lump sum. When appropriate, the Corporation shall arrange an installment payment schedule. Claims which cannot be collected directly or by administrative offset shall be either written off as administratively uncollectible or referred to the General Counsel for further consideration.

(b) The Chairman, or designee of the Chairman, may compromise claims for money or property arising out of the activities of the Corporation, where the claim (exclusive of charges for interest, penalties, and administrative costs) does not exceed $100,000. When the claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to accept a compromise rests solely with the Department of Justice. The standards governing the compromise of claims are set forth in 4 CFR part 103.

(c) The Chairman, or designee of the Chairman, may suspend or terminate the collection of claims which do not exceed $100,000 (exclusive of charges for interest, penalties, and administrative costs) after deducting the amount of any partial payments or collections. If, after deducting the amount of any partial payments or collections, a claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to suspend or terminate rests solely with the Department of Justice. The standards governing the suspension or termination of claim collections are set forth in 4 CFR part 104.

(d) The Corporation shall refer claims to the Department of Justice for litigation or to the General Accounting Office (GAO) for claims arising from audit exceptions taken by the GAO to payments made by the Corporation in accordance with 4 CFR part 105.

§ 1408.6

Demand for payment.

(a) A total of three progressively stronger written demands at not more than 30-day intervals should normally be made upon a debtor, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demands may be preceded by other appropriate actions under Federal law, including immediate referral for litigation and/or administrative offset.

(b) The initial demand for payment shall be in writing and shall inform the debtor of the following:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) The payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the initial demand for payment;

(3) The right of the debtor to inspect and copy the records of the agency related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor may be assessed for the cost of copying the documents in accordance with § 1408.7;

(4) The right of the debtor to obtain a review of the Corporation's determination of indebtedness;

(5) The right of the debtor to offer to enter into a written agreement with the agency to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the agency;

(6) That charges for interest, penalties, and administrative costs will be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date;

(7) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt by the payment due date, the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset;

(8) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt; and

(9) Other information, as may be appropriate.

(c) If, prior to, during, or after completion of the demand cycle, the Corporation determines to collect the debt by either administrative or salary offset, the Corporation shall follow, as applicable, the requirements for a Notice of Intent to Collect by Administrative Offset or a Notice of Intent to Collect by Salary Offset set forth in § 1408.22.

(d) If no response to the initial demand for payment is received by the payment due date, the Corporation shall take further action under this part, under the Federal Claims Collection Act of 1966, as amended, under the joint regulations (4 CFR parts 101-105), or under any other applicable State or Federal law. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contracts, debarment, and salary or administrative offset.

§ 1408.7

Right to inspect and copy records.

The debtor may inspect and copy the Corporation records related to the claim. The debtor shall give the Corporation reasonable advanced notice that he/she intends to inspect and copy the records involved. The debtor shall pay copying costs unless they are waived by the Corporation. Copying costs shall be assessed pursuant to § 1402.22 of this chapter.

§ 1408.8

Right to offer to repay claim.

(a) The debtor may offer to enter into a written agreement with the Corporation to repay the amount of the claim. The acceptance of such an offer and the decision to enter into such a written agreement is at the discretion of the Corporation.

(b) If the debtor requests a repayment arrangement because payment of the amount due would create a financial hardship, the Corporation shall analyze the debtor's financial condition. The Corporation may enter into a

(c) The written agreement may require the debtor to execute a confess-judgment note when the total amount of the deferred installments will exceed $750. The Corporation shall provide the debtor with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation. The statement shall recite that the written explanation was read and understood before execution of the note and that the debtor signed the note knowingly and voluntarily. Documentation of these procedures will be maintained in the Corporation's file on the debtor.

§ 1408.9

Right to agency review.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt or of the amount of the debt. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the initial demand letter, within 15 calendar days after receipt of the letter. The debtor's request for review shall state the basis on which the claim is disputed.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with § 1408.10.

(d) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official pursuant to § 1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset.

§ 1408.10

Review procedures.

(a) Unless an oral hearing is required by § 1408.23(d), the Corporation's review shall be a review of the written record of the claim.

(b) If an oral hearing is required under § 1408.23(d) the Corporation shall provide the debtor with a reasonable opportunity for such a hearing. The oral hearing, however, shall not be an adversarial adjudication and need not take the form of a formal evidentiary hearing. All significant matters discussed at the hearing, however, will be carefully documented.

(c) Any review required by this part, whether a review of the written record or an oral hearing, shall be conducted by a hearing official. In the case of a salary offset, the hearing official shall not be under the supervision or control of the Chairman of the Farm Credit System Insurance Corporation.

(d) The Corporation may be represented by legal counsel. The debtor may represent himself or herself or may be represented by an individual of the debtor's choice and at the debtor's expense.

(e) The hearing official shall issue a final written decision based on documentary evidence and, if applicable, information developed at an oral hearing. The written decision shall be issued as soon as practicable after the review but not later than 60 days after the date on which the request for review was received by the Corporation, unless the debtor requests a delay in the proceedings. A delay in the proceedings shall be granted if the hearing official determines, in his or her sole discretion, that there is good cause to grant

(f) Upon issuance of the written opinion, the Corporation shall promptly notify the debtor of the hearing official's decision. Said notification shall include a copy of the written decision issued by the hearing official pursuant to paragraph (e) of this section.

§ 1408.11

Special review.

(a) An employee subject to salary offset, under subpart C of this part, or a voluntary repayment agreement, may, at any time, request a special review by the Corporation of the amount of the

salary offset or voluntary repayment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) To determine whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Corporation shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an undue financial hardship on the employee. The Corporation shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

§ 1408.12

Charges for interest, administrative costs, and penalties.

(a) Except as provided in paragraph (d) of this section, the Corporation shall:

(1) Assess interest on unpaid claims;

(2) Assess administrative costs incurred in processing and handling overdue claims; and

(3) Assess penalty charges not to exceed 6 percent a year on any part of a debt more than 90 days past due.

The imposition of charges for interest, administrative costs, and penalties shall be made in accordance with 31 U.S.C. 3717.

(b)(1) Interest shall accrue from the date of mailing or hand delivery of the initial demand for payment or the Notice of Intent to Collect by either Administrative or Salary Offset if the amount of the claim is not paid within 30 days from the date of mailing or hand delivery of the initial demand or notice.

(2) The 30-day period may be extended on a case-by-case basis if the Corporation reasonably determines that such action is appropriate. Interest shall only accrue on the principal of the claim and the interest rate shall remain fixed for the duration of the indebtedness, except, as provided in paragraph (c) of this section, in cases where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, or if the Corporation reasonably determines that a higher rate is necessary to protect the interests of the United States.

(c) If a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Corporation may assess a new interest rate on the unpaid claim. In addition, charges for interest, administrative costs, and penalties which accrued but were not collected under the original repayment agreement shall be added to the principal of the claim to be paid under the new repayment agreement. Interest shall accrue on the entire principal balance of the claim, as adjusted to reflect any increase resulting from the addition of these charges.

(d) The Corporation may waive charges for interest, administrative costs, and/or penalties if it determines that:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of charges for interest, administrative costs, and/or penalties would jeopardize collection of the principal of the claim;

(3) Collection of charges for interest, administrative costs, or penalties would be against equity and good conscience; or

(4) It is otherwise in the best interest of the United States, including the situation where an installment payment agreement or offset is in effect.

§ 1408.13

Contracting for collection services.

The Chairman, or designee of the Chairman, may contract for collection services in accordance with 31 U.S.C. 3718 and 4 CFR 102.6 to recover debts.

§ 1408.14

Reporting of credit information.

The Chairman, or designee of the Chairman, may disclose to a consumer reporting agency information that an individual is responsible for a debt owed to the United States. Information will be disclosed to reporting agencies in accordance with the terms and conditions of agreements entered into between the Corporation and the reporting agencies. The terms and conditions of such agreements shall specify that all of the rights and protection afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled. The Corporation shall notify each consumer reporting agency, to which a claim was disclosed, when the debt has been satisfied.

§ 1408.15

Credit report.

In order to aid the Corporation in making appropriate determinations regarding the collection and compromise of claims; the collection of charges for interest, administrative costs, and penalties; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the Corporation may institute, consistent with the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681,

et seq.

Subpart BAdministrative Offset

§ 1408.20

Applicability.

(a) The provisions of this subpart shall apply to the collection of debts by administrative [or salary] offset under 31 U.S.C. 3716, 5 U.S.C. 5514, or other statutory or common law.

(b) Offset shall not be used to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility of discovering and collecting such debt.

(c) Offset shall not be used with respect to:

(1) Debts owed by other agencies of the United States or by any State or local government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1986, as amended, or tariff laws of the United States; or

(3) Any case in which collection by offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(d) Unless otherwise provided by contract or law, debts or payments which are not subject to offset under 31 U.S.C. 3716 or 5 U.S.C. 5514 may be collected by offset if such collection is authorized under common law or other applicable statutory authority.

§ 1408.21

Collection by offset.

(a) Collection of a debt by administrative [or salary] offset shall be accomplished in accordance with the provisions of these regulations, 4 CFR 102.3, and 5 CFR part 550, subpart K. It is not necessary for the debt to be reduced to judgment or to be undisputed for offset to be used.

(b) The Chairman, or designee of the Chairman, may determine that it is feasible to collect a debt to the United States by offset against funds payable to the debtor.

(c) The feasibility of collecting a debt by offset will be determined on a case-by-case basis. This determination shall be made by considering all relevant factors, including the following: (1) The

(2) The degree to which the Corporation is certain that its determination of the existence and amount of the debt is correct;

(3) The practicality of collecting the debt by offset. The cost, in time and money, of collecting the debt by offset and the amount of money which can reasonably be expected to be recovered through offset will be relevant to this determination; and

(4) Whether the use of offset will substantially interfere with or defeat the purpose of a program authorizing payments against which the offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, the imposition of offset against such a payment may be inappropriate.

(d) The collection of a debt by offset may not be feasible when there are circumstances which would indicate that the likelihood of collection by offset is less than probable.

(e) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset (or Notice of Intent to Collect by Salary Offset if the offset is a salary offset), or upon the expiration of a stay of offset, unless the Corporation determines under § 1408.24 that immediate action is necessary.

(f) If the debtor owes more than one debt, amounts recovered through offset may be applied to them in any order. Applicable statutes of limitation would be considered before applying the amounts recovered to any debts owed.

§ 1408.22

Notice requirements before offset.

(a) Except as provided in § 1408.24, the Corporation will provide the debtor with 30 calendar days' written notice that unpaid debt amounts shall be collected by administrative [or salary] offset (Notice of Intent to Collect by Administrative [or Salary] Offset) before the Corporation imposes offset against any money that is to be paid to the debtor.

(b) The Notice of Intent to Collect by Administrative [or Salary] Offset shall be delivered to the debtor by hand or by mail and shall provide the following information:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) In the case of an administrative offset, the payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the Notice;

(3) In the case of a salary offset:

(i) The Corporation's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full; and

(ii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The right of the debtor to inspect and copy the records of the Corporation related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that he/she shall be assessed for the cost of copying the documents in accordance with § 1408.7 of this part;

(5) The right of the debtor to obtain a review of, and to request a hearing, on the Corporation's determination of indebtedness, the propriety of collecting the debt by offset, and, in the case of salary offset, the propriety of the proposed repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period). The debtor shall be informed that to obtain a review, the debtor shall deliver a written request for a review to the Corporation official named in the Notice, within 15 calendar days after the debtor's receipt of the Notice. In the case of a salary offset, the debtor shall also be informed that the review shall be conducted by an official arranged for by the Corporation who shall be a hearing official not under the control of the Chairman of the Farm Credit System Insurance Corporation, or an administrative law judge;

(6) That the filing of a petition for hearing within 15 calendar days after receipt of the Notice will stay the commencement of collection proceedings;

(7) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the written request for review unless the employee requests, and the hearing official grants, a delay in the proceedings;

(8) The right of the debtor to offer to enter into a written agreement with the Corporation to repay the

amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the Corporation;

(9) That charges for interest, penalties, and administrative costs shall be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date. The debtor shall be informed that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards (4 CFR parts 103 and 104);

(10) The amount of accrued interest and the amount of any other penalties or administrative costs which may have been added to the principal debt;

(11) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt prior to the date on which the offset is to be imposed, the Corporation intends to collect the debt by administrative [or salary] offset or by requesting other Federal agencies for assistance in collecting the debt by offset. The debtor shall be informed that the offset shall be imposed against any funds that might become available to the debtor, until the principal debt and all accumulated interest and other charges are paid in full;

(12) The date on which the offset will be imposed, which shall be 31 calendar days from the date of mailing or hand delivery of the Notice. The debtor shall be informed that the Corporation reserves the right to impose an offset prior to this date if the Corporation determines that immediate action is necessary;

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(i) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or any other applicable statutory authority;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority; and, with regard to employees,

(iii) Disciplinary procedures appropriate under 5 U.S.C. chapter 75; 5 CFR part 752, or any other

applicable statute or regulation;

(14) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt or the offset;

(15) Any other rights and remedies available to the debtor under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Other information, as may be appropriate.

(c) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.23

Right to review of claim.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt, the amount of the debt, the propriety of collecting the debt by offset, and in the case of salary offset, the propriety of the proposed repayment schedule. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the Notice of Intent to Collect by Administrative [or Salary] Offset within 15 calendar days after receipt of the notice. The debtor's written request for review shall state the basis on which the claim is disputed and shall specify whether the debtor requests an oral hearing or a review of the written

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with § 1408.10.

(d) The Corporation's review of the claim, under this section, shall include providing the debtor with a reasonable opportunity for an oral hearing if:

(1) An applicable statute authorizes or requires the Corporation to consider waiver of the indebtedness, 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 the Corporation determines that the question of the indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(e) A debtor waives the right to a hearing and will have his or her debt offset in accordance with the proposed offset schedule if the debtor:

(1) Fails to file a written request for review within the timeframe set forth in paragraph (b) of this section, unless the Corporation determines that the delay was the result of circumstances beyond his or her control; or

(2) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(f) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official, pursuant to § 1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by offset or by requesting other Federal agencies for assistance in collecting the debt.

(g) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.24

Waiver of procedural requirements.

(a) The Corporation may impose offset against a payment to be made to a debtor prior to the completion of the procedures required by this part, if:

(1) Failure to impose the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The timing of the payment against which the offset will be imposed does not reasonably permit the completion of those procedures.

(b) The procedures required by this part shall be complied with promptly after the offset is imposed. Amounts recovered by offset, which are later found not to be owed to the Government, shall be promptly refunded to the debtor.

§ 1408.25

Coordinating offset with other Federal agencies.

(a)(1) Any creditor agency which requests the Corporation to impose an offset against amounts owed to the debtor shall submit to the Corporation a claim certification which meets the requirements of this paragraph. The Corporation shall submit the same certification to any agency that the Corporation requests to effect an offset.

(2) The claim certification shall be in writing. It shall certify the debtor owes the debt and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. If the intended offset is to be a salary offset, a claim certification shall instead certify that the debtor owes the debt and that the applicable requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met.

(3) A certification that the debtor owes the debt shall state the amount of the debt, the factual basis supporting the determination of indebtedness, and the date on which payment of the debt

(b)(1) The Corporation shall not effect an offset requested by another Federal agency without first obtaining the claim certification required by paragraph (a) of this section. If the Corporation receives an incomplete claim certification, the Corporation shall return the claim certification with notice that a claim certification which complies with the requirements of paragraph (a) of this section must be

submitted to the Corporation before the Corporation will consider effecting an offset.

(2) The Corporation may rely on the information contained in the claim certification provided by a requesting creditor agency. The Corporation is not authorized to review a creditor agency's determination of indebtedness.

(c) Only the creditor agency may agree to enter into an agreement with the debtor for the repayment of the claim. Only the creditor agency may agree to compromise, suspend, or terminate collection of the claim.

(d) The Corporation may decline, for good cause, a request by another agency to effect an offset. Good cause includes that the offset might disrupt, directly or indirectly, essential Corporation operations. The refusal and the reasons shall be sent in writing to the creditor agency.

§ 1408.26

Stay of offset.

(a)(1) When a creditor agency receives a debtor's request for inspection of agency records, the offset is stayed for 10 calendar days beyond the date set for the record inspection.

(2) When a creditor agency receives a debtor's offer to enter into a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When offset is stayed, the amount of the debt and the amount of any accrued interest or other charges will be withheld from payments to the debtor. The withheld amounts shall not be applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) If the Corporation is the creditor agency and the offset is stayed, the Corporation will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

§ 1408.27

Offset against amounts payable from Civil Service Retirement and Disability Fund.

The Corporation may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the Corporation by the debtor. The Corporation must certify that the debtor owes the debt, the amount of the debt, and that the Corporation has complied with the requirements set forth in this part, 4 CFR 102.3, and the Office of Personnel Management regulations. The request shall be submitted to the official designated in the Office of Personnel Management regulations to receive the request.

Subpart COffset Against Salary

§ 1408.35

Purpose.

The purpose of this subpart is to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97-365 (5 U.S.C. 5514)), which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. These regulations provide procedures for the collection of a debt owed to the Government by the

§ 1408.36

Applicability of regulations.

(a) These regulations apply to the following cases:

(1) Where the Corporation is owed a debt by an individual currently employed by another agency;

(2) Where the Corporation is owed a debt by an individual who is currently employed by the Corporation; or

(3) Where the Corporation currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the Corporation will offset the debtor-employee's salary in accordance with these regulations.

(b) These regulations do not apply to the following: (1) Debts or claims arising under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1

et seq.

et seq.

(2) Any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(3) A claim which has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials charged with the responsibility for discovery and collection of such debts.

§ 1408.37

Definitions.

In this subpart, the following definitions shall apply:

(a)

Agency

(1) An executive agency as defined by 5 U.S.C. 105, including the United States Postal Service and the United States Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multi-district Litigation;

(4) An agency of the legislative branch, including the United States Senate and the United States House of Representatives; or

(5) Other independent establishments that are entities of the Federal Government.

(b)

Disposable pay

(c)

Employee

(d)

Waiver

§ 1408.38

Waiver requests and claims to the General Accounting Office.

(a) The regulations contained in this subpart do not preclude an employee from requesting a waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting

(b) These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 1408.39

Procedures for salary offset.

(a) The Chairman, or designee of the Chairman, shall determine the amount of an employee's disposable pay and the amount to be deducted from the employee's disposable pay at regular pay intervals.

(b) Deductions shall begin within three official pay periods following the date of mailing or delivery of the Notice of Intent to Collect by Salary Offset.

(c)(1) If the amount of the debt is equal to or is less than 15 percent of the employee's disposable pay, such debt should be collected in one lump-sum deduction.

(2) If the amount of the debt is not collected in one lump-sum deduction, the debt shall be collected in installment deductions over a period of time 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 from any pay period will not exceed 15 percent of the employee's disposable pay for that period, unless the employee has agreed in writing to the deduction of a greater amount.

(3) A deduction exceeding the 15-percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) Whenever an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check pursuant to 31 U.S.C. 3716, the Corporation may offset any later payments of any kind against the balance of the debt.

(d) In instances where two or more creditor agencies are seeking salary offsets against current employees of the Corporation or where two or more debts are owed to a single creditor agency, the Corporation, at its discretion, may determine whether one or more debts should be offset simultaneously within the 15-percent limitation. Debts owed to the Corporation should generally take precedence over debts owed to other agencies.

§ 1408.40

Refunds.

(a) In instances where the Corporation is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States (unless expressly prohibited by statute or regulations); or

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

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

§ 1408.41

Requesting current paying agency to offset salary.

(a) To request a paying agency to impose a salary offset against amounts owed to the debtor, the Corporation shall provide the paying agency with a claim certification which meets the requirements set forth in § 1408.25(a) of this part. The Corporation shall also provide the paying agency with a repayment schedule determined under the provisions of § 1408.39 or in accordance with a repayment agreement entered into with the debtor.

(b) If the employee separates from the paying agency before the debt is paid in full, the paying agency shall certify the total amount collected on the debt. A copy of this certification shall be sent to the employee and a copy shall be sent to the Corporation. If the paying agency 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 provisions of this section have been fully complied with. However, the Corporation must submit a properly

(c) When an employee transfers to another paying agency, the Corporation is not required to repeat the due process procedures set forth in 5 U.S.C. 5514 and this part to resume the collection. The Corporation shall, however, review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) If a special review is conducted pursuant to § 1408.11 and results in a revised offset or repayment schedule, the Corporation shall provide a new claim certification to the paying agency.

§ 1408.42

Responsibility of the Corporation as the paying agency.

(a) When the Corporation receives a claim certification from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Corporation shall send the debtor written notice which provides:

(1) That the Corporation has received a valid claim certification from the creditor agency;

(2) The date on which salary offset will begin;

(3) The amount of the debt; and

(4) The amount of such deductions.

(b) If, after the creditor agency has submitted the claim certification to the Corporation, the employee transfers to a different agency before the debt is collected in full, the Corporation must certify the total amount collected on the debt. The Corporation shall send a copy of this certification to the creditor agency and a copy to the employee. If the Corporation is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it shall provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount).

§ 1408.43

Nonwaiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not be construed as a waiver of any rights the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

Pt. 1410

PART 1410PREMIUMS

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Documentation.

Authority:

Secs. 12 U.S.C. 2020, 2277a-4, 2277a-5, 2277a-7.

Source:

56 FR 3201, Jan. 29, 1991, unless otherwise noted.

§ 1410.1

Purpose and scope.

This part sets forth the rules for:

(a) The calculation of premiums;

(b) The time for payment of the premium required by sections 5.55 and 5.56 of the Farm Credit Act of 1971, as amended;

(c) Interest charges on delinquent payments;

(d) The form and content of certified statements; and,

(e) Documentation supporting certified statements.

§ 1410.2

Definitions.

(a)

Act

(b)

Average principal outstanding

(c)

Direct lending association

(d)

Government-guaranteed loans or investments

(1) By the full faith and credit of the United States Government or any State government; or,

(2) By an agency or other entity of the United States Government whose obligations are explicitly guaranteed by the United States Government; or,

(3) By an agency or other entity of a State government whose obligations are explicitly guaranteed by such State government.

(e)

Insured bank

(f)

Loan

(g)(1)

Nonaccrual loan

(i) Any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, are determined to be uncollectible for any reason; or,

(ii) It has been classified loss as a result of a periodic credit evaluation and has not been charged off; or,

(iii) The loan is severely past due and is not adequately secured, in process of collection, and fully collectible with respect to all principal and interest.

(2) For the purposes of determining whether a loan is considered as accrual or nonaccrual under this part, all loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(h)

Other financing institution

[56 FR 3201, Jan. 29, 1991; 56 FR 10302, Mar. 11, 1991; 74 FR 17373, Apr. 15, 2009]

§ 1410.3

Calculation and reporting of premiums due.

(a)

Reporting.

(b)

Calculating the premium payment for periods from July 1, 2008 through December 31, 2008.

(2) In accord with paragraph (b)(1) of this section, the premium payment for the 3rd Quarter 2008

(having been reduced by the Corporation acting under section 5.55(a)(3) of the Act) shall be equal to 25 percent of the following amount:

(i) The average outstanding insured obligations issued by the bank for the period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2) of the Act, multiplied by 0.0015; and

(ii) The product obtained by multiplying

(A) The sum of

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1

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2

(B) By 0.0010.

(3) In accord with paragraph (b)(1) of this section, the premium payment for the 4th Quarter 2008 (having been reduced by the Corporation acting under section 5.55(a)(3) of the Act) shall be equal to 25 percent of the following amount:

(i) The average outstanding insured obligations issued by the bank for the period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2) of the Act, multiplied by 0.0018; and

(ii) The product obtained by multiplying

(A) The sum of

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(B) By 0.0010.

(c)

Calculating the premium payment for periods in 2009 and subsequent years.

(2) In accord with paragraph (c)(1) of this section, the premium payment for the period shall (unless reduced by the Corporation acting under section 5.55(a)(3) of the Act or under paragraph (d) of this section) be equal to:

(i) The average outstanding insured obligations issued by the bank for the period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2), multiplied by 0.0020; and

(ii) The product obtained by multiplying

(A) The sum of

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1

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2

(B) By 0.0010.

(d)

Secure base amount

[74 FR 17373, Apr. 15, 2009]

§ 1410.4

Payment of premiums.

(a)

Payments.

(b)

Premiums as obligations of insured banks.

[56 FR 3201, Jan. 29, 1991; 56 FR 10302, Mar. 11, 1991; 74 FR 17374, Apr. 15, 2009]

§ 1410.5

Delinquent premium payments and premium overpayments.

(a)

Delinquent payments.

Federal Register.

(1)

Current year.

(ii) For delinquent days occurring from April 1 to June 30, the rate will be the TFRM rate that is published in March for the second quarter of the year.

(iii) For delinquent days occurring from July 1 to September 30, the rate will be the TFRM rate that is published in June for the third quarter.

(iv) For delinquent days occurring from October 1 to December 31, the rate will be the TFRM rate that is published in September for the fourth quarter.

(2)

Prior years.

(b)

Other rights and remedies.

(c)

Overpayments.

(1) The excess shall be credited against future premium payments by the bank which overpaid; or,

(2)(i) Upon written request to the Corporation by the bank which overpaid, the excess shall be refunded to the bank within 30 days of receipt of the written request; and

(ii) If the Corporation fails to make a refund within such 30-day period, and the Corporation determines that a refund is in order, the Corporation shall pay to the bank interest on the amount of the overpayment, from the end of such 30-day period through the date the refund is issued.

§ 1410.6

Certified statements.

(a)

Forms.

(b)

Amendments to certified statements.

[56 FR 3201, Jan. 29, 1991, as amended at 56 FR 57233, Nov. 8, 1991; 74 FR 17374, Apr. 15, 2009]

§ 1410.7

Documentation.

Each insured bank shall:

(a) Prepare and maintain accurate and complete records as necessary to prepare certified statements, including, but not limited to, records relating to the loans of each direct lending association and other financing institution that are able to make such loans because they are receiving, or have received, funding from the insured bank.

(b) Prepare and maintain on its premises books and records in such a manner as to facilitate reconciliation with certified statements prepared from them.

(c) Maintain in its books and records documentation supporting its certified statement for a period no less than 5 years following the date of each certified statement, unless the bank shall have requested in writing, and the Corporation shall have granted to the bank, written permission to dispose of such documentation prior to the expiration of 5 years.

(d) Make all records and any supporting documentation available, without limitation, to Corporation officials upon request.

Pt. 1411

PART 1411RULES OF PRACTICE AND PROCEDURE

Authority:

12 U.S.C. 2277a-7(10), 2277a-14(c) and (d); 28 U.S.C. 2461

note.

Subpart ARules and Procedures for Assessment and Collection of Civil Money Penalties

§ 1411.1

Inflation adjustment of civil money penalties for failure to file a certified statement, pay any premium required or obtain approval before employment of persons convicted of criminal offenses.

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, a civil money penalty imposed pursuant to section 5.65(c) or (d) of the Farm Credit Act of 1971, as amended, shall not exceed $249 per day for each day the violation continues.

[88 FR 2813, Jan. 18, 2023]

Pt. 1412

PART 1412GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.

Authority:

12 U.S.C. 2277a-10b.

Source:

71 FR 7405, Feb. 13, 2006, unless otherwise noted.

§ 1412.1

Scope.

(a) This part limits and/or prohibits, in certain circumstances, the ability of Farm Credit System (System) institutions, their service corporations, subsidiaries and affiliates from making golden parachute and indemnification payments to institution-related parties (IRPs).

(b) This part applies to System institutions in a troubled condition that seek to make golden parachute payments to their IRPs.

(c) The limitations on indemnification payments apply to all System institutions, their service corporations, subsidiaries and affiliates regardless of their financial health.

§ 1412.2

Definitions.

(a)

Act

Farm Credit Act

(b)

Farm Credit System institution

System institution

(c)

Benefit plan

(d)

Bona fide deferred compensation plan or arrangement

(1) An IRP 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 System institution 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, except that the assets of such trust may be available to satisfy claims of the System institution's creditors in the case of insolvency; or

(2) The System institution establishes a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (d)(1) of this section:

(i) Primarily for the purpose of providing benefits for certain IRPs in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 415, 401(a)(17), 402(g)); 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 (f)(2)(v) of this section and permissible golden parachute payments described in § 1412.5); and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (d)(1) and (2) of this section, the following requirements shall apply:

(i) The plan was in effect at least 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(ii) Any payment made pursuant to such plan is made in accordance with the terms of the plan as in effect no later than 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section and in accordance with any amendments to such plan during such 1 year period that do not increase the benefits payable thereunder;

(iii) The IRP 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 1 year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(vi) The System institution 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, except that the assets of such trust may be available to

(vii) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

(e)

Corporation or FCSIC

(f)

Golden parachute payment.

(i) Is contingent on the termination of such party's primary employment or relationship with the System institution; 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 System institution which is making the payment or bankruptcy or insolvency (or similar event) of the service corporation, subsidiary or affiliate which is making the payment; or

(B) The System institution is assigned a composite rating of 4 or 5 by the FCA; or

(C) The appointment of any conservator or receiver for such System institution; or

(D) A determination by the Corporation, that the System institution is in a troubled condition, as defined in paragraph (m) of this section; and

(iii) Is payable to an IRP whose employment by or relationship with a System institution is terminated at a time when the System institution by which the IRP is employed or related satisfies any of the conditions enumerated in paragraphs (f)(1)(ii)(A) through (D) of this section, or in contemplation of any of these conditions.

(2)

Exceptions.

(i) Any payment made pursuant to a pension or retirement plan which 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

(ii) Any payment made pursuant to a benefit plan as that term is defined in paragraph (c) of this section; or

(iii) Any payment made pursuant to a bona fide deferred compensation plan or arrangement as defined in paragraph (d) of this section; or

(iv) Any payment made by reason of death or by reason of termination caused by the disability of IRP; or

(v) Any severance or similar payment which is required to be made pursuant to a state statute or foreign law which 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); or

(vi) Any other payment which the Corporation determines to be permissible in accordance with § 1412.6, on permissible indemnification payments; or

(vii) 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. Furthermore, 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 System institution was in a condition specified in paragraph

(f)(1)(ii) of this section or in contemplation of such a condition without the prior written consent of the FCA; or in lieu of a payment made pursuant to this paragraph;

(viii) Any payment made pursuant to a severance pay plan or arrangement that provides severance benefits upon involuntary termination other than for cause, voluntary resignation, or early retirement. No employee shall receive any payment under this subpart which exceeds the base compensation paid to such employee during the 12 months (or longer period or greater benefit as the Corporation shall consent to) immediately proceeding termination of employment. Furthermore, such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or the scope of the severance benefits at a time when the System institution was in a condition specified in paragraph (f)(1)(ii) of this

(g) The

FCA

(h)

Institution-related party (IRP)

(1) Any director, officer, employee, or controlling stockholder (other than another Farm Credit System institution) of, or agent for a System institution;

(2) Any stockholder (other than another Farm Credit System institution), consultant, joint venture partner, and any other person as determined by the FCA (by regulation or case-by-case) who participates in the conduct of the affairs of a System institution; and

(3) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the System institution.

(i)

Liability or legal expense

(1) Any legal or other professional fees and expenses incurred in connection with any claim,

proceeding, or action;

(2) The amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or actions; and

(3) The amount of, any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, processing, or action.

(j)

Nondiscriminatory

(k)

Payment

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of benefits in the nature of compensation, including but not limited to stock options and stock appreciation rights; or

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

(l)

Prohibited indemnification payment.

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the institution; or

(iii) Is required to cease and desist from or take any affirmative action with respect to such

institution.

(2)

Exceptions.

(ii) The term prohibited indemnification payment shall not include any reasonable payment by a System institution that represents partial indemnification for legal or professional expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the IRP has not violated certain FCA laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty, unless the administrative action or civil proceedings has resulted in a final prohibition order against the IRP.

(m)

Troubled condition

(1) Is subject to a cease-and-desist order or written agreement issued by the FCA that requires action to improve the financial condition of the System institution or is subject to a proceeding initiated by the FCA which contemplates the issuance of an order that requires action to improve the financial condition of the institution, unless otherwise informed in writing by the FCA; or

(2) Is unable to make a timely payment of principal or interest on any insured obligation (as defined in section 5.51(3) of the Farm Credit Act; 12 U.S.C. 2277a(3)); or

(3) Is receiving assistance as described in section 5.61 of the Farm Credit Act, 12 U.S.C. 2277a-10; or

(4) Is unable to make timely payment of principal or interest on debt obligations issued under the authority of section 8.6(e)(2) of the Farm Credit Act; 12 U.S.C. 2279aa-6(e)(2) or is unable to fulfill the guarantee obligations provided under section 8.6 of the Farm Credit Act; 12 U.S.C. 2279aa-6; or

(5) Is informed in writing by the Corporation that it is in a troubled condition for purposes of the requirements of this subpart on the basis of the System institution's most recent report of condition or report of examination or other information available to the Corporation.

§ 1412.3

Golden parachute payments prohibited.

No System institution shall make or agree to make any golden parachute payment, except as provided in this part.

§ 1412.4

Prohibited indemnification payments.

No System institution shall make or agree to make any prohibited indemnification payment, except as provided in this part.

§ 1412.5

Permissible golden parachute payments.

(a) A System institution may agree to make or may make a golden parachute payment if and to the extent that:

(1) The FCA, with the written concurrence of the Corporation, determines that such a payment or agreement is permissible; or

(2) Such an agreement is made in order to hire a person to become an IRP either at a time when the System institution satisfies or in an effort to prevent it from imminently satisfying any of the criteria set forth in § 1412.2(f)(1)(ii), and the FCA and the Corporation consent in writing to the amount and terms of the golden parachute payment. Such consent by the Corporation and the FCA shall not improve the IRP's position in the event of the insolvency of the institution since such consent can neither bind a receiver nor affect the provability of receivership claims. In the event that the institution is placed into receivership or conservatorship, the Corporation and/or the FCA shall not be obligated to pay the promised golden parachute and the IRP shall not be accorded preferential treatment on the basis of such prior approval; or

(3) Such a payment is made pursuant to an agreement which provides for a reasonable severance payment, not to exceed 18-months' salary, to an IRP in the event of a change in control of the System institution;

provided, however,

(4) A System institution or IRP making a request pursuant to paragraphs (a)(1) through (3) of this section shall demonstrate that it is not aware of any information, evidence, documents or other materials which would indicate that there is a reasonable basis to believe, at the time such payment is proposed to be made, that:

(i) The IRP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the System institution that has had or is likely to have a material adverse effect on the institution;

(ii) The IRP is substantially responsible for the insolvency of, the appointment of a conservator or receiver for, or the troubled condition, as defined by applicable regulations concerning the System institution;

(iii) The IRP has materially violated any applicable Federal or state law or regulation that has had or is likely to have a material effect on the System institution; and

(iv) The IRP has violated or conspired to violate section 215, 657, 1006, 1014, or 1344 of title 18 of the United States Code or section 1341 or 1343 of such title affecting a Farm Credit System institution.

(b) In making a determination under paragraphs (a)(1) through (3) of this section the FCA and the Corporation may consider:

(1) Whether, and to what degree, the IRP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IRP was affiliated with the System institution, and the degree to which the proposed payment represents reasonable compensation earned over the period of employment and reasonable payment for services rendered; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of the Act or this part.

§ 1412.6

Permissible indemnification payments.

(a) A System institution may make or agree to make reasonable indemnification payments to an IRP with respect to an administrative proceeding or civil action initiated by the FCA if:

(1) The System institution's board of directors, in good faith, determines in writing after due investigation and consideration that the IRP acted in good faith and in a manner he/she believed to be in the best interests of the institution;

(2) The System institution's board of directors, in good faith, determines in writing after due investigation and consideration that the payment of such expenses will not materially adversely affect the institution's safety and soundness;

(3) The indemnification payments do not constitute prohibited indemnification payments as that term is defined in § 1412.2(l); and

(4) The IRP agrees in writing to reimburse the System institution, to the extent not covered by payments from insurance or bonds purchased pursuant to § 1412.2(l)(2), for that portion of the advanced indemnification payments which subsequently become prohibited indemnification payments, as defined herein.

(b) An IRP requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments;

provided, however,

(c) In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in

(d) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have

been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

§ 1412.7

Filing instructions.

Requests to make excess nondiscriminatory severance plan payments and permitted golden parachute payments shall be submitted in writing to the FCA and the Corporation. The request shall be in letter form and shall contain all relevant factual information as well as the reasons why such approval should be granted.

§ 1412.8

Application in the event of receivership.

The provisions of this part or any consent or approval granted under the provisions of this part by the Corporation (in its corporate capacity), shall not in any way bind any receiver of a failed System institution. Any consent or approval granted under the provisions of this part by the Corporation or the FCA shall not in any way obligate such agency or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification or other agreement. Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when the Corporation is appointed as receiver for any System institution, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such receiver. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of any IRP contrary to 12 U.S.C. 2277a-10b(d).

PARTS 1413-1499 [RESERVED]

Department of the Treasury

CHAPTER XVDEPARTMENT OF THE TREASURY

SUBCHAPTER AGENERAL PROVISIONS

Part

1500.2

What are the limitations on managing or operating a portfolio company held as a merchant banking investment?

1500.3

What are the holding periods permitted for merchant banking investments?

1500.4

How are investments in private equity funds treated under this part?

1500.5

What aggregate thresholds apply to merchant banking investments?

1500.6

What risk management, record keeping and reporting policies are required to make merchant banking investments?

1500.7

How do the statutory cross marketing and sections 23A and B limitations apply to merchant banking investments?

1500.8

Definitions.

Authority:

12 U.S.C. 1843(k).

Source:

Reg. Y, 66 FR 8489, Jan. 31, 2001, unless otherwise noted.

§ 1500.1

What type of investments are permitted by this part, and under what conditions may they be made?

(a)

What types of investments are permitted by this part?

(b)

Must the investment be a bona fide merchant banking investment?

(c)

What types of ownership interests may be acquired?

(d)

Where in a financial holding company may merchant banking investments be made?

(e)

May assets other than shares be held directly?

(1) The assets are held by or promptly transferred to a portfolio company;

(2) The portfolio company maintains policies, books and records, accounts, and other indicia of corporate, partnership or limited liability organization and operation that are separate from the financial holding company and limit the legal liability of the financial holding company for obligations of the portfolio company; and

(3) The portfolio company has management that is separate from the financial holding company to the extent required by § 1500.2.

(f)

What type of affiliate is required for a financial holding company to make merchant banking investments?

(1)

Securities affiliate.

(i) A broker or dealer; or

(ii) A municipal securities dealer, including a separately identifiable department or division of a bank that is registered as a municipal securities dealer.

(2)

Insurance affiliate with an investment adviser affiliate.

(i) An insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance), or providing and issuing

annuities; and

(ii) A company that:

(A) Is registered with the Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1

et seq.

(B) Provides investment advice to an insurance company.

§ 1500.2

What are the limitations on managing or operating a portfolio company held as a merchant banking investment?

(a)

May a financial holding company routinely manage or operate a portfolio company?

(b)

When does a financial holding company routinely manage or operate a company?

Examples of routine management or operation

Executive officer interlocks at the portfolio company.

(ii)

Interlocks by executive officers of the financial holding company

Prohibition.

(B)

Definition.

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(iii)

Covenants regarding ordinary course of business.

(2)

Presumptions of routine management or operation.

(i) Any director, officer, or employee of the financial holding company serves as or has the responsibilities of an officer (other than an executive officer) or employee of the portfolio company; or

(ii) Any officer or employee of the portfolio company is supervised by any director, officer, or employee of the financial holding company (other than

(c)

How may a financial holding company rebut a presumption that it is routinely managing or operating a portfolio company?

(d)

What arrangements do not involve routinely managing or operating a portfolio company?

Director representation at portfolio companies.

(i) The portfolio company employs officers and employees responsible for routinely managing and operating the company; and

(ii) The financial holding company does not routinely manage or operate the portfolio company, except as permitted in paragraph (e) of this section.

(2)

Covenants or other provisions regarding extraordinary events.

(i) The acquisition of significant assets or control of another company by the portfolio company or

any of its subsidiaries;

(ii) Removal or selection of an independent accountant or auditor or investment banker by the portfolio company;

(iii) Significant changes to the business plan or accounting methods or policies of the portfolio company;

(iv) Removal or replacement of any or all of the executive officers of the portfolio company;

(v) The redemption, authorization or issuance of any equity or debt securities (including options, warrants or convertible shares) of the portfolio company or any borrowing by the portfolio company outside of the ordinary course of business;

(vi) The amendment of the articles of incorporation or by-laws (or similar governing documents) of the portfolio company; and

(vii) The sale, merger, consolidation, spin-off, recapitalization, liquidation, dissolution or sale of substantially all of the assets of the portfolio company or any of its significant subsidiaries.

(3)

Providing advisory and underwriting services to, and having consultations with, a portfolio company.

(i) Provide financial, investment and management consulting advice to a portfolio company in a manner consistent with and subject to any restrictions on such activities contained in § 225.28(b)(6) or § 225.86(b)(1) of the Board's Regulation Y (12 CFR 225.28(b)(6) and 225.86(b)(1));

(ii) Provide assistance to a portfolio company in connection with the underwriting or private placement of its securities, including acting as the underwriter or placement agent for such securities; and

(iii) Meet with the officers or employees of a portfolio company to monitor or provide advice with respect to the portfolio company's performance or activities.

(e)

When may a financial holding company routinely manage or operate a portfolio company?

Special circumstances required.

(2)

Duration Limited.

(3)

Notice required for extended involvement.

(4)

Documentation required.

(f)

May a depository institution or its subsidiary routinely manage or operate a portfolio company?

In general.

(2)

Definition applying provisions governing routine management or operation.

(3)

Exception for certain subsidiaries of depository institutions.

et seq.

§ 1500.3

What are the holding periods permitted for merchant banking investments?

(a)

Must investments be made for resale?

(b)

What period of time is generally permitted for holding merchant banking investments?

In general.

(2)

Ownership interests acquired from or transferred to companies held under this part.

(i) Acquired by a financial holding company from a company in which the financial holding company held an interest under this part will be considered to have been acquired by the financial holding company on the date that the share, asset or ownership interest was acquired by the company; and

(ii) Acquired by a company from a financial holding company will be considered to have been acquired by the company on the date that the share, asset or ownership interest was acquired by the financial holding company if

(A) The financial holding company held the share, asset, or ownership interest under this part; and

(B) The financial holding company holds an interest in the acquiring company under this part.

(3)

Interests previously held by a financial holding company under limited authority.

(4)

Approval required to hold interests held in excess of time limit.

(i) Be submitted to the Board at least 90 days prior to the expiration of the applicable time period;

(ii) Provide the reasons for the request, including information that addresses the factors in paragraph (b)(5) of this section; and

(iii) Explain the financial holding company's plan for divesting the shares, assets or ownership interests.

(5)

Factors governing Board determinations.

(i) The cost to the financial holding company of disposing of the investment within the applicable period;

(ii) The total exposure of the financial holding company to the company and the risks that disposing of the investment may pose to the financial holding company;

(iii) Market conditions;

(iv) The nature of the portfolio company's business;

(v) The extent and history of involvement by the financial holding company in the management and operations of the company; and

(vi) The average holding period of the financial holding company's merchant banking investments.

(6)

Restrictions applicable to investments held beyond time period.

(i) For purposes of determining the financial holding company's regulatory capital, apply to the financial holding company's adjusted carrying value of such shares, assets, or ownership interests a capital charge determined by the Board that must be:

(A) Higher than the maximum marginal Tier 1 capital charge applicable under the Board's capital adequacy rules or guidelines (

see

(B) In no event less than 25 percent of the adjusted carrying value of the investment; and

(ii) Abide by any other restrictions that the Board may impose in connection with granting approval under paragraph (b)(4) of this section.

§ 1500.4

How are investments in private equity funds treated under this part?

(a)

What is a private equity fund?

(1) Is formed for the purpose of and is engaged exclusively in the business of investing in shares, assets, and ownership interests of financial and nonfinancial companies for resale or other disposition;

(2) Is not an operating company;

(3) No more than 25 percent of the total equity of which is held, owned or controlled, directly or indirectly, by the financial holding company and its directors, officers, employees and principal shareholders;

(4) Has a maximum term of not more than 15 years; and

(5) Is not formed or operated for the purpose of making investments inconsistent with the authority granted under section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) or evading the limitations governing merchant banking investments contained in this part.

(b)

What form may a private equity fund take?

(c)

What is the holding period permitted for interests in private equity funds?

In general.

(2)

Request to hold interest for longer period.

(3)

Application of rules.

(d)

How do the restrictions on routine management and operation apply to private equity funds and investments held through a private equity fund?

(2)

Private equity funds controlled by a financial holding company.

(3)

Private equity funds that are not controlled by a financial holding company.

(4)

When does a financial holding company control a private equity fund?

(i) Serves as a general partner, managing member, or trustee of the private equity fund (or serves in a similar role with respect to the private equity fund);

(ii) Owns or controls 25 percent or more of any class of voting shares or similar interests in the private equity fund;

(iii) In any manner selects, controls or constitutes a majority of the directors, trustees or management of the private equity fund; or

(iv) Owns or controls more than 5 percent of any class of voting shares or similar interests in the private equity fund and is the investment adviser to the fund.

§ 1500.5

What aggregate thresholds apply to merchant banking investments?

(a)

In general.

(1) 30 percent of the Tier 1 capital of the financial holding company; or

(2) After excluding interests in private equity funds, 20 percent of the Tier 1 capital of the financial holding company

(b)

How do these thresholds apply to a private equity fund?

(c)

How long do these thresholds remain in effect?

§ 1500.6

What risk management, record keeping and reporting policies are required to make merchant banking investments?

(a)

What internal controls and records are necessary?

General.

(i) Monitor and assess the carrying value, market value and performance of each investment and the aggregate portfolio;

(ii) Identify and manage the market, credit, concentration and other risks associated with such investments;

(iii) Identify, monitor and assess the terms, amounts and risks arising from transactions and relationships (including contingent fees or contingent interests) with each company in which the financial holding company holds an interest under this part;

(iv) Ensure the maintenance of corporate separateness between the financial holding company and each company in which the financial holding company holds an interest under this part and protect the financial holding company and its depository institution subsidiaries from legal liability for the

operations conducted and financial obligations of each such company; and

(v) Ensure compliance with this part.

(2)

Availability of records.

(b) Certain additional recordkeeping and reporting requirements for merchant banking investments are set forth in the Board's Regulation Y, 12 CFR 225.175.

§ 1500.7

How do the statutory cross marketing and sections 23A and B limitations apply to merchant banking investments?

Certain cross-marketing limitations and limitations under sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1) applicable to merchant banking investments are set forth in the Board's Regulation Y, 12 CFR 225.176.

§ 1500.8

Definitions.

(a)

What do references to a financial holding company include?

(2) Except as otherwise expressly provided, the term financial holding company does not include a depository institution or subsidiary of a depository institution or any portfolio company controlled directly or indirectly by the financial holding company.

(b)

What do references to a depository institution include?

(c)

What is a portfolio company?

(1) That is engaged in any activity not authorized for the financial holding company under section 4 of the Bank Holding Company Act (12 U.S.C. 1843); and

(2) Any shares, assets or ownership interests of which are held, owned or controlled directly or

indirectly by the financial holding company pursuant to this part, including through a private equity fund that the financial holding company controls.

(d)

Who are the executive officers of a company?

(2) The term executive officer does not include

(i) Any person, including a person with an official title, who may exercise a certain measure of discretion in the performance of his duties, including the discretion to make decisions in the ordinary course of the company's business, but who does not participate in the determination of major policies of the company and whose decisions are limited by policy standards fixed by senior management of the company; or

(ii) Any person who is excluded from participating (other than in the capacity of a director) in major policymaking functions of the company by resolution of the board of directors or by the bylaws of the company and who does not in fact participate in such policymaking functions.

(e)

What is the Board?

(f)

How are other terms that are used in this part defined?

Pt. 1501

PART 1501FINANCIAL SUBSIDIARIES

Sec.

1501.1

How do you request the Secretary to determine that an activity is financial in nature or incidental to a financial activity?

1501.2

What activities has the Secretary determined to be financial in nature or incidental to a financial activity?

1501.3

Comparable ratings requirement for national banks among the second 50 largest insured banks.

Authority:

Section 5136A of the Revised Statutes of the United States (12 U.S.C. 24a).

Source:

65 FR 14821, Mar. 20, 2000, unless otherwise noted.

§ 1501.1

How do you request the Secretary to determine that an activity is financial in nature or incidental to a financial activity?

(a)

Requests regarding activities that may be financial in nature or incidental to a financial activity.

(b)

What information must the request contain?

(1) Identify and define the activity for which the determination is sought, specifically describing what the activity would involve and how the activity would be conducted;

(2) Explain in detail why the activity should be considered financial in nature or incidental to a financial activity; and

(3) Provide information supporting the requested determination and any other information required by the Secretary concerning the proposed activity.

(c)

What factors will the Secretary take into account in making his determination?

(i) The purposes of section 5136A of the Revised Statutes (12 U.S.C. 24a) and the GLBA;

(ii) Changes or reasonably expected changes in the marketplace in which banks compete;

(iii) Changes or reasonably expected changes in the technology for delivering financial services; and

(iv) Whether the activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to

(A) Compete effectively with any company seeking to provide financial services in the United States;

(B) Efficiently deliver information and services that are financial in nature through the use of technological

(C) Offer customers any available or emerging technological means for using financial services or for the document imaging of data.

(2) Because the Secretary is required to consider the factors in paragraph (c)(1) of this section in making his determination, any request should address the factors in paragraph (c)(1) of this section. The Secretary may also consider other relevant factors.

(d)

What action will the Secretary take after receiving a request?

Consultation with the Board of Governors of the Federal Reserve System (Board).

(2)

Public notice.

Federal Register

(e)

How and when will the Secretary act on a request?

(1) Will inform the requester of the Secretary's final determination regarding the requested activity; and

(2) Will endeavor to inform the requester of the Secretary's final determination within 60 days of completion of both the consultative process described in paragraph (d)(1) of this section and the public comment period, if any.

(f)

What must a national bank do in order for a financial subsidiary to engage in activities that the Secretary has determined are financial in nature or incidental to financial activities?

§ 1501.2

What activities has the Secretary determined to be financial in nature or incidental to a financial activity?

(a)

Activities permitted under section 5136A(b)(3) of the Revised Statutes (12 U.S.C. 24a(b)(3)).

(i) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;

(ii) Providing any device or other instrumentality for transferring money or other financial assets; and

(iii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(2)

Review of specific activities

Is a specific request required?

(ii)

Consultation with the Board of Governors of the Federal Reserve System.

(iii)

Secretary action on requests.

(3)

What factors will the Secretary consider?

(4)

What information must the request contain?

(i) Identify and define the activity for which the determination is sought, specifically describing what the activity would involve and how the activity would be conducted; and

(ii) Provide information supporting the requested determination, including information regarding how the proposed activity falls into one of the categories listed in paragraph (a)(1) of this section, and any other information required by the Secretary concerning the proposed activity.

(b) [Reserved]

[66 FR 260, Jan. 3, 2001]

§ 1501.3

Comparable ratings requirement for national banks among the second 50 largest insured banks.

(a)

Scope and purpose.

(b)

Alternative criteria.

(c)

Definition of long-term issuer credit rating.

[66 FR 8750, Feb. 2, 2001]

PARTS 1502-1503 [RESERVED]

PARTS 1505-1507 [RESERVED]

SUBCHAPTER BRESOLUTION FUNDING CORPORATION

Pt. 1510

PART 1510RESOLUTION FUNDING CORPORATION OPERATIONS

Sec.

1510.1

Authority, purpose, and scope.

1510.2

Definitions.

1510.3

How does the Funding Corporation pay administrative expenses?

1510.4

Who may act as the depositary and fiscal agent for the Funding Corporation?

1510.5

How does the Funding Corporation make interest payments on its obligations?

1510.6

What must the Funding Corporation do with surplus funds?

1510.7

What are the Funding Corporation's reporting requirements?

1510.8

What are the audit requirements for the Funding Corporation?

Authority:

12 U.S.C. 1441b; Sec. 14(d), Pub. L. 105-216, 112 Stat. 910.

Source:

65 FR 12069, Mar. 8, 2000, unless otherwise noted.

§ 1510.1

Authority, purpose, and scope.

(a)

Authority.

(b)

Purpose and scope.

(c)

Authority of the Funding Corporation.

§ 1510.2

Definitions.

The following definitions apply to terms used in this part unless the context requires otherwise:

Act

et seq.

Administrative expenses

Bank

Custodian fee

Directorate

FDIC

et seq.

Finance Board

FSLIC Resolution Fund

et seq.

Funding Corporation

Funding Corporation Principal Fund

Interest payment due date

Net earnings

Obligations

RTC

Secretary

§ 1510.3

How does the Funding Corporation pay administrative expenses?

(a)

The Directorate proposes a budget.

(b)

The Secretary approves the budget.

(c)

Budget changes must be approved by the Secretary.

(d)

The Funding Corporation collects funds from the Banks to pay its administrative expenses.

§ 1510.4

Who may act as the depositary and fiscal agent for the Funding Corporation?

(a)

In general, the Federal Reserve Banks.

(b)

For administrative accounts, insured depository institutions.

§ 1510.5

How does the Funding Corporation make interest payments on its obligations?

(a)

The Funding Corporation must obtain funds from up to four sources.

(1) Earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund.

(2) To the extent funds identified in paragraph (a)(1) of this section are insufficient, the Funding Corporation must obtain from each Bank in each calendar year payments totaling 20 percent of the net earnings of the Bank. The Funding Corporation must not obtain funds from a Bank under this paragraph after the date upon which the term of the Bank's payment obligation has ended, as determined by the Finance Board pursuant to section 21B(f)(2)(C)(iii) of the Act.

(3) To the extent funds identified in paragraphs (a)(1) and (2) of this section are insufficient, the Funding Corporation must obtain from the FSLIC Resolution Fund amounts available from any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund.

(4) To the extent that funds from the sources identified in paragraphs (a)(1) through (3) of this section are insufficient, the Funding Corporation must obtain from the Secretary the additional amount due.

(b)

The Funding Corporation must obtain projections of funds availability from the Banks and the FSLIC Resolution Fund.

(1) The Funding Corporation must obtain from each Bank a statement signed by an officer of such Bank containing sufficient information on the Banks net earnings to enable the Funding Corporation to make quarterly projections of funds available from the Bank for the current quarter and the next three quarters; and

(2) The Funding Corporation must obtain from an authorized representative of the FSLIC Resolution Fund projections of the amount of funds available in the current quarter and the next three quarters

from the net proceeds from the sale of received from the RTC.

(c)

The Funding Corporation must report funding projections to the Secretary.

(1) The aggregate amounts of each of the next four quarterly interest payments due on obligations; and

(2) The amounts projected to be available to fund such payments from:

(i) Earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund;

(ii) Payments from the Banks; and

(iii) Funds transferred from the FSLIC Resolution Fund.

(d)

The Funding Corporation must request funds from the Banks, the FSLIC Resolution Fund, and the Secretary

Requests to the Banks.

(2)

Request to the FSLIC Resolution Fund.

(i) Notify the FSLIC Resolution Fund in writing of:

(A) The interest payment due date;

(B) The aggregate amount of the quarterly interest payment due on that date; and

(C) The amount of the quarterly interest payment that will be funded by earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund and payments due from the Banks; and

(ii) Request that the FSLIC Resolution Fund transfer to the Funding Corporation by noon on the third business day prior to the interest payment due date any funds available from the net proceeds from the sale of assets received from the RTC, to the extent funds identified in paragraphs (a)(1) and (2) of this section are insufficient to pay the interest due.

(3)

Request to the Secretary.

[65 FR 12069, Mar. 8, 2000, as amended at 66 FR 47071, Sept. 11, 2001]

§ 1510.6

What must the Funding Corporation do with surplus funds?

If the Funding Corporation has funds that are not needed for current interest payments on obligations, it must invest the funds in obligations of the United States issued by the Secretary, in accordance with an investment policy approved by the Secretary.

§ 1510.7

What are the Funding Corporation's reporting requirements?

In addition to the budget submission required by § 1510.3 and the funding projection reports required by § 1510.5, the Funding Corporation must prepare such reports as the Secretary may require, including reports necessary to assist the Secretary in making the annual report to Congress and the President on the Funding Corporation under section 21B(i) of the Act.

§ 1510.8

What are the audit requirements for the Funding Corporation?

The Funding Corporation must obtain an audit of its books and records by an independent external auditor at least annually.

Pt. 1511

PART 1511BOOK-ENTRY PROCEDURE

Sec.

Law governing rights and obligations of the Funding Corporation and Federal Reserve Banks; rights of any Person against the Funding Corporation and the Federal Reserve Banks.

1511.3

Law governing other interests.

1511.4

Creation of Participant's Security Entitlement; security interests.

1511.5

Obligations of Funding Corporation; no adverse claims.

1511.6

Authority of Federal Reserve Banks.

1511.7

Liability of the Funding Corporation and Federal Reserve Banks.

1511.8

Notice of attachment.

Authority:

12 U.S.C. 1441b.

Source:

61 FR 66875, Dec. 19, 1996, unless otherwise noted.

§ 1511.0

Applicability.

The regulations in this part apply to Book-entry Funding Corporation Securities.

§ 1511.1

Definitions of terms.

In this part, unless the context indicates otherwise:

Act

et seq.

Adverse Claim

Book-entry Funding Corporation Security

Book-entry System

Entitlement Holder

Federal Reserve Bank or Reserve Bank

Federal Reserve Bank Operating Circular

Funding Corporation

Funding Corporation Security

Security

Funds Account

Participant

Participant's Securities Account

Person

Revised Article 8

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Securities Documentation

Securities Intermediary

(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 Funding Corporation Security 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

State

Transfer message

[61 FR 66875, Dec. 19, 1996, as amended at 69 FR 18803, Apr. 9, 2004]

§ 1511.2

Law governing rights and obligations of the Funding Corporation and Federal Reserve Banks; rights of any Person against the Funding Corporation and the Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the regulations contained in this part 1511, the Securities Documentation and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of the Funding Corporation and the Federal Reserve Banks with respect to:

(i) A Book-entry Funding Corporation Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Funding Corporation Securities; and

(2) The rights of any Person, including a Participant, against the Funding Corporation and the Federal Reserve Banks with respect to:

(i) A Book-entry Funding Corporation Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Funding Corporation Securities.

(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 § 1511.4(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 § 1511.4(c)(1), is governed by the law determined in the manner specified in § 1511.3.

(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 (incorporated by reference, see § 1511.1), then the law specified in paragraph (b) shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 1511.3

Law governing other interests.

(a) To the extent not inconsistent with the regulations in this part, the law (not including the conflict-of-law rules) of a 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 paragraph (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 paragraph (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 (incorporated by reference, see § 1511.1), 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 Book-entry Funding Corporation Security is a Security Entitlement.

§ 1511.4

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 Funding Corporation 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 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) The Funding Corporation 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, the Funding Corporation, 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 § 1511.2(b) or § 1511.3. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a

Obligations of Funding Corporation; 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 § 1511.4(c)(1), for the purposes of this part 1511, the Funding Corporation and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Funding Corporation 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 the Funding Corporation is liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Funding Corporation Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Funding Corporation 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 Funding Corporation to make payments of interest and principal with respect to Book-entry Funding Corporation Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Funding Corporation Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry Funding Corporation 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 principal and interest where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest, as directed by the Participant. The principal of such Securities shall be paid using the proceeds of the noninterest bearing instruments maintained by the Funding Corporation for such purpose.

Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Funding Corporation to perform functions with respect to the issuance of Book-entry Funding Corporation Securities offered and sold by the Funding Corporation, in accordance with the Securities Documentation, and Federal Reserve Bank Operating Circulars; to service and maintain Book-entry Funding Corporation Securities in accounts established for such purposes; to make payments of principal and interest with respect to such Book-entry Funding Corporation Securities as directed by the Funding Corporation; to effect transfer of Book-entry Funding Corporation Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Funding Corporation.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this Part, governing the details of its handling of Book-entry Funding Corporation Securities, Security Entitlements, and the operation of the Book-Entry System under this Part.

§ 1511.7

Liability of the Funding Corporation and Federal Reserve Banks.

The Funding Corporation and the Federal Reserve Banks may rely on the information provided in a Transfer Message, or other documentation, and are not required to verify the information. The Funding Corporation and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a

§ 1511.8

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 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.

PARTS 1512-1599 [RESERVED]

CHAPTER XVIOFFICE OF FINANCIAL RESEARCH, DEPARTMENT OF THE TREASURY

Pt. 1600

PART 1600ORGANIZATION AND FUNCTIONS OF THE OFFICE OF FINANCIAL RESEARCH

Authority:

5 U.S.C. 301, 7301, 31 U.S.C. 321, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (Pub. L. 111-203); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306.

Source:

76 FR 60708, Sept. 30, 2011, unless otherwise noted.

§ 1600.1

Standards of ethical conduct.

This section applies to the employees of the Office of Financial Research and is in addition to 5 CFR 3101.101-104, and 31 CFR part 0:

(a)

Definitions

(1) Business confidential information shall include trade secret or other formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers. This shall include non-public position and transaction data, as well as data provided to supervisors or regulators that is unpublished.

(2) Position data is defined as:

(i) Data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(ii) Includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position.

(3) Transaction data is defined as the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation.

(4) Micro-level data is defined as information specific to an individual transaction or position.

(5) Masked data is defined as data that has been altered to prevent attribution to a particular financial company.

(6) Financial company has the same meaning given to such term in title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301

et seq.

(b)

One-year post-employment restriction.

(2) A current or former employee of the Office of Financial Research who has had limited access to the transaction or position data or business confidential information maintained by the Data Center about financial entities required to report to the Office may request a written waiver pursuant to paragraph (c) of this section from the Designated Agency Ethics Official to be employed by or provide advice or consulting services to a financial company, provided that the issuance of the waiver would not compromise any data or business confidential information.

(c)

Waivers

(1) The Designated Agency Ethics Official, in consultation with the Director of the Office of Financial Research or the Department's General Counsel in instances where consultation with the Director poses a conflict or the Director's position is vacant, determines in writing that such waiver is unlikely to compromise any financial company's business confidential information, unfairly advantage or disadvantage any financial company, or affect

(2) Relevant factors to be considered by the Designated Agency Ethics Official and the Director or General Counsel include

(i) The nature and importance of the employee's position and the degree to which the employee had access to non-public or business confidential data for the purpose of analysis, standardization, or performing applied research or essential long-term research;

(ii) Whether the information to which the employee had access revealed positions or transactions of an individual financial company;

(iii) Whether the data, especially position data, remains sensitive considering changing circumstances or the passage of time;

(iv) Whether the employee had access to micro-level data, as compared to aggregated information;

(v) If the employee had access to micro-level data, whether it was sufficiently masked or coded to protect the identity of the provider or the subject financial company;

(vi) Whether the information to which the employee had access would provide a financial company

employer with a competitive commercial advantage;

(vii) Whether the financial company employer has made a satisfactory representation that it has adopted screening measures which will effectively prevent a potential employee from sharing any transaction or position data or business confidential information acquired at the Office of Financial Research one year prior to accepting employment with the company;

(viii) Whether granting the waiver would affect the willingness of a financial company to continue to provide transaction or position data or business confidential information to the Office; and

(ix) Whether the proposed employment would create an appearance of impropriety or would otherwise adversely affect the interests of the government or compromise the integrity of the office.

(d) The following examples are illustrative of how the OFR post-employment prohibitions would apply under certain circumstances:

(1)

Example 1.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(2)

Example 2.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would be prohibited, for a period of one year immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(3)

Example 3.

(ii) Designated Agency Ethics Official's Determination: Upon termination of employment by OFR,

such employee would be prohibited, for a period of six months immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(4)

Example 4.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(5)

Example 5.

relating to a particular sector (i.e. banking).

(ii) Designated Agency Ethics Official's Determination: Upon termination of employment by OFR, such employee would be prohibited, for a period of one year immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company

in that particular sector (i.e. banking)

(6)

Example 6.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(7)

Example 7.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or

consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

PARTS 1601-1609 [RESERVED]

Pt. 1610

PART 1610REGULATORY DATA COLLECTIONS

Subpart ACollections Generally

Sec.

Authority:

12 U.S.C. 5343 and 5344.

Source:

84 FR 4984, Feb. 20, 2019, unless otherwise noted.

Subpart ACollections Generally

§ 1610.1

General authority.

The collections under this part are made pursuant to the authority contained in 12 U.S.C. 5343(a)

and (c)(1) and 5344(b).

§ 1610.2

General definitions.

Council

Legal Entity Identifier

(1) Regulatory Oversight Committee means the Regulatory Oversight Committee (of the Global LEI System), whose charter was set forth by the Finance Ministers and Central Bank Governors of the Group of Twenty and the Financial Stability Board, or any successor thereof; and

(2) Global LEI Foundation means the not-for-profit organization organized under Swiss law by the Financial Stability Board in 2014, or any successor thereof.

Office

§ 1610.3

Treatment of collected information.

The Office will treat any financial transaction data or position data submitted to the Data Center under this part in accordance with the relevant provisions of law, including 12 U.S.C. 5343(b) and 5344(b).

§§ 1610.4-1610.9

[Reserved]

Subpart BSpecific Collections

§ 1610.10

Centrally cleared repurchase agreement data.

(a)

Definitions.

Central counterparty

Clearing agency

Covered reporter

General collateral trade

Repurchase agreement transaction

Specific-security trade

(b)

Purpose and scope

Purpose.

(2)

Scope of application.

(c)

Data required.

(2) Covered reporters shall only report trade and collateral information with respect to any repurchase agreement transaction for which there is a current or future delivery obligation as of the file observation date, including forward-starting transactions.

(3) Covered reporters shall submit the following data elements for all general collateral trades:

Table 1 to § 1610.10

(c)

Data element

Explanation

File Observation Date

The observation date of the file (typically one business day before the day the file is submitted).

Covered Reporter LEI

The Legal Entity Identifier of the covered reporter.

Transaction ID

Respondent-generated unique transaction identifier.

Submission Timestamp

Time that trade is first submitted to clearing service.

Match Timestamp

Time that trade is matched by clearing service.

Securities Asset Class Identifier Value

Asset class identifier.

Securities Asset Class Identifier Type

Type of securities identifier used (the numbering system to which the identifier belongs).

Cash Provider LEI

The Legal Entity Identifier of the cash provider.

Cash Provider Name

The legal name of the cash provider.

Cash Provider Internal Identifier

The internal identifier assigned by the covered reporter to the cash provider.

Cash Provider Direct Clearing Member LEI

The Legal Entity Identifier of the direct clearing member through which the cash provider accessed the clearing service.

Cash Provider Direct Clearing Member Name

The legal name of the of the direct clearing member through which the cash provider accessed the clearing service.

Cash Provider Direct Clearing Member Internal Identifier

The internal identifier assigned by the covered reporter to the direct clearing member through which the cash provider accessed the clearing service.

Securities Provider LEI

The Legal Entity Identifier of the securities provider.

Securities Provider Name

The legal name of the securities provider.

Securities Provider Internal Identifier

The internal identifier assigned by the covered reporter to the securities provider.

Securities Provider Direct Clearing Member LEI

The Legal Entity Identifier of the direct clearing member through which the securities provider accessed the clearing service.

Securities Provider Direct Clearing Member Name

The legal name of the direct clearing member through which the securities provider accessed the clearing service.

Securities Provider Direct Clearing Member Internal Identifier

The internal identifier assigned by the covered reporter to the direct clearing member through which the securities provider accessed the clearing service.

Broker LEI

The Legal Entity Identifier of the broker.

Broker Name

The legal name of the broker.

Broker Internal Identifier

The internal identifier assigned by the covered reporter to the broker.

Start Date

The start date of the repurchase agreement.

End Date

The date the repurchase agreement matures.

Rate

The repurchase agreement rate, expressed as an annual percentage rate on an actual/360-day basis.

Principal

The amount of cash borrowed or lent.

Optionality

The type of optionality, if any, in the repurchase agreement.

Minimum Maturity

The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).

(4) Covered reporters shall submit the following data elements on the collateral delivered against net general collateral exposures for all general collateral trades:

Table 2 to § 1610.10

(c)

Data element

Explanation

File Observation Date

The observation date of the file (typically one business day before the day the file is submitted).

Covered Reporter LEI

The Legal Entity Identifier of the covered reporter.

Direct Clearing Member LEI

The Legal Entity Identifier of the direct clearing member of the clearing service.

Direct Clearing Member Name

The legal name of the direct clearing member.

Direct Clearing Member Internal Identifier

The internal identifier assigned by the covered reporter to the direct clearing member.

Transaction Side

Indicates the side of the transaction: Collateral was received by or delivered from the covered reporter.

Securities Identifier Value

Identifier of securities transferred.

Securities Identifier Type

Type of securities identifier used (the numbering system to which the identifier belongs).

Securities Quantity

Par value or quantity (as applicable) of securities transferred.

Securities Value

The market value as of most recent valuation of securities transferred, including accrued interest.

(5) Covered reporters shall submit the following data elements for all specific-security trades:

Table 3 to § 1610.10

(c)

Data element

Explanation

File Observation Date

The observation date of the file (typically one business day before the day the file is submitted).

Covered Reporter LEI

The Legal Entity Identifier of the covered reporter.

Transaction ID

Respondent-generated unique transaction identifier.

Cash Provider LEI

The Legal Entity Identifier of the cash provider.

Cash Provider Name

The legal name of the cash provider.

Cash Provider Internal Identifier

The internal identifier assigned by the covered reporter to the cash provider.

Cash Provider Direct Clearing Member LEI

The Legal Entity Identifier of the direct clearing member through which the cash provider accessed the clearing service.

Cash Provider Direct Clearing Member Name

The legal name of the of the direct clearing member through which the cash provider accessed the clearing service.

Cash Provider Direct Clearing Member Internal Identifier

The internal identifier assigned by the covered reporter to the direct clearing member through which the cash provider accessed the clearing service.

Securities Provider LEI

The Legal Entity Identifier of the securities provider.

Securities Provider Name

The legal name of the securities provider.

Securities Provider Internal Identifier

The internal identifier assigned by the covered reporter to the securities provider.

Securities Provider Direct Clearing Member LEI

The Legal Entity Identifier of the direct clearing member through which the securities provider accessed the clearing service.

Securities Provider Direct Clearing Member Name

The legal name of the direct clearing member through which the securities provider accessed the clearing service.

Securities Provider Direct Clearing Member Internal Identifier

The internal identifier assigned by the covered reporter to the direct clearing member through which the securities provider accessed the clearing service.

Broker LEI

The Legal Entity Identifier of the broker.

Broker Name

The legal name of the broker.

Broker Internal Identifier

The internal identifier assigned by the covered reporter to the broker.

Submission Timestamp

Time that trade is first submitted to clearing service.

Match Timestamp

Time that trade is matched by clearing service.

Start Date

The start date of the repurchase agreement.

End Date

The date when the repurchase agreement matures; the close leg settlement date.

Optionality

The type of optionality, if any.

Minimum Maturity

The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).

Security Identifier Value

Identifier of pledged security.

Securities Identifier Type

Type of securities identifier used (the numbering system to which the identifier belongs).

Securities Quantity

Par value or quantity (as applicable) of securities transferred.

Substitution Collateral Identifier Value

Asset class identifier or no substitution.

Substitution Collateral Identifier Type

Type of securities identifier used (the numbering system to which the identifier belongs).

Cash Provider Start Leg Amount

The amount of cash transferred by the cash provider on the open leg of the transaction.

Securities Provider Start Leg Amount

The amount of cash received by the securities provider on the open leg of the transaction.

Cash Provider Rate

The rate of interest received by the cash provider, expressed as an annual percentage rate on an actual/360-day basis.

Securities Provider Rate

The rate of interest paid by the securities provider, expressed as an annual percentage rate on an actual/360-day basis.

Cash Provider Close Leg Settlement Amount

The amount of cash received by the cash provider on the close leg of the transaction.

Securities Provider Close Leg Settlement Amount

The amount of cash paid by the securities provider on the close leg of the transaction.

(d)

Reporting process and collection agent.

(e)

Compliance.

(i) Subject to paragraph (e)(1)(iii) of this section, a covered reporter shall begin reporting all data elements required to be submitted pursuant to paragraph (c)(5) of this section within 180 days after April 22, 2019.

(ii) Subject to paragraph (e)(1)(iii) of this section, a covered reporter shall begin reporting all data elements required to be submitted pursuant to paragraphs (c)(3) and (4) of this section within 240 days after April 22, 2019.

(iii) If a covered reporter is able to effect a rulemaking through the Securities and Exchange Commission requiring each direct clearing member, counterparty, and broker associated with a repurchase agreement transaction to obtain an LEI and provide it to the covered reporter, the covered reporter shall begin reporting all data elements requiring an LEI other than its own pursuant to paragraphs (c)(3) through (5) of this section by the later of the effective date of its rulemaking, or

420 days April 22, 2019, and continue to report all data elements requiring a legal name or internal identifier until 365 days after the date the covered reporter begins reporting all data elements requiring an LEI pursuant to this section. If a covered reporter is unable to effect such a rulemaking, the covered reporter is not required to report any data elements requiring an LEI other than its own pursuant to paragraphs (c)(3) through (5) of this section, except, if available, the LEI for any direct clearing member, counterparty, or broker associated with a repurchase agreement transaction that has an LEI, and shall report all data elements requiring a legal name or internal identifier in any report submitted under this section regardless of whether the relevant entity has an LEI. A covered reporter shall report its own LEI in accordance with the schedules set forth in paragraphs (e)(1)(i) and (ii) of this section.

(2) The first submission by any central counterparty that is a covered reporter as of the effective date of this Section shall be submitted on the first business day after the applicable compliance date under paragraph (e)(1) of this section.

Note 1 to paragraph (

e

For example, if this section became effective on March 20, 2019, a central counterparty that meets the dollar threshold specified in paragraph (b)(2) of this section for the calendar quarter ending December 31, 2018, would be required to submit its first report under paragraph (e)(1)(i) of this section on the first business day after September 16, 2019, its first report under paragraph (e)(1)(ii) of this section on November 15, 2019, and its first report with data elements requiring an LEI (other than that of the covered reporter) on May 13, 2020 (if the covered reporter effected the rulemaking described in paragraph (e)(1)(iii) of this section).

(3) Any central counterparty that becomes a covered reporter after the effective date of this Section shall comply with the reporting requirements pursuant to this Section beginning on the later of the schedule set forth in paragraphs (e)(1)(i) through (iii) of this section or the first business day of the third calendar quarter following the calendar quarter in which such central counterparty meets the

dollar threshold specified in paragraph (b)(2) of this section.

Note 2 to paragraph (

e

For example, if this section became effective on March 20, 2019, a central counterparty that first meets the dollar threshold specified in paragraph (b)(2) of this section for the calendar quarter ending June 30, 2019, would be required to submit its first report under paragraphs (e)(1)(i) and (ii) of this section on January 2, 2020, and its first report with data elements requiring an LEI (other than that of the covered reporter) on May 13, 2020 (if the covered reporter effected the rulemaking described in paragraph (e)(1)(iii) of this section by May 13, 2020).

Note 3 to paragraph (

e

For example, if this section became effective on March 20, 2019, a central counterparty that first met the dollar threshold specified in paragraph (b)(2) for the calendar quarter ending June 30, 2020, would be required to comply with all of the reporting requirements under this section on January 2, 2021 (and would continue

PARTS 1611-1699 [RESERVED]

CHAPTER XVIIOFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER AOFHEO ORGANIZATION AND FUNCTIONS [RESERVED]

SUBCHAPTER B [RESERVED]

SUBCHAPTER CSAFETY AND SOUNDNESS

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Prompt corrective action

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SUBCHAPTER AOFHEO ORGANIZATION AND FUNCTIONS [RESERVED]

SUBCHAPTER B [RESERVED]

SUBCHAPTER CSAFETY AND SOUNDNESS

PARTS 1700-1709 [RESERVED]

Pt. 1777

PART 1777PROMPT CORRECTIVE ACTION

Sec.

1777.1

Authority, purpose, scope, and implementation dates.

1777.2

Preservation of other authority.

1777.3

Definitions.

Subpart APrompt Supervisory Response

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1777.27

Exhaustion and review.

1777.28

Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

Authority:

12 U.S.C. 1452(b)(2), 1456(c), 1718(c)(2), 1723a(k), 4513(a), 4513(b), 4514, 4517, 4611-4619, 4622, 4623, 4631, 4635.

Source:

67 FR 3598, Jan. 25, 2002, unless otherwise noted.

§ 1777.1

Authority, purpose, scope, and implementation dates.

(a)

Authority.

(b)

Authority, purpose and scope of subpart A.

(c)

Authority, purpose, and scope of subpart B.

(d)

Effective dates of capital classifications.

§ 1777.2

Preservation of other authority.

(a)

Supervisory standards.

(b)

Capital floor.

(c)

Form of supervisory action or response.

§ 1777.3

Definitions.

For purposes of this part, the following definitions will apply:

1992 Act

et seq.

Affiliate

Capital distribution

(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;

and

(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 section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401

et seq.

Core capital

Critical capital level

Enterprise

Minimum capital level

OFHEO

Risk-based capital level

Total capital

Subpart APrompt Supervisory Response

§ 1777.10

Developments prompting supervisory response.

In the event of any of the following developments, OFHEO shall undertake one of the supervisory responses enumerated in § 1777.11, or a combination thereof:

(a) OFHEO's national House Price Index (HPI) for the most recent quarter is more than two percent less than the national HPI four quarters previously, or for any Census Division or Divisions in which are located properties securing more than 25 percent of single-family mortgages owned or securing securities guaranteed by an enterprise, the HPI for the most recent quarter for such Division or Divisions is more than five percent less than the HPI for that Division or Divisions four quarters previously;

(b) An Enterprise's publicly reported net income for the most recent calendar quarter is less than one-half of its average quarterly net income for any four-quarter period during the prior eight quarters;

(c) An Enterprise's publicly reported net interest margin (NIM) for the most recent quarter is less than one-half of its average NIM for any four-quarter period during the prior eight quarters;

(d) For single-family mortgage loans owned or securities by an Enterprise that are delinquent ninety days or more or in foreclosure, the proportion

(e) Any other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprise or a possible violation of applicable law, regulation, or order.

§ 1777.11

Supervisory response.

(a)

Level I supervisory response

Supervisory letter.

(2)

Contents of supervisory letter.

(i) Provide OFHEO with any relevant information known to the Enterprise about the potentially adverse development, in such format as OFHEO directs;

(ii) Respond to specific questions and concerns that OFHEO poses about the potentially adverse development; and

(iii) Take appropriate action.

(3)

Review; further action.

(4)

Sequence of supervisory responses.

(b)

Level II supervisory response

Special review.

(2)

Review; further action.

(c)

Level III supervisory response

Action plan.

(2)

Contents of action plan.

(i) In the case of any potentially adverse development arising from conditions or practices internal to the Enterprise, any relevant information known to the Enterprise about the circumstances that led to the potentially adverse development;

(ii) An assessment of likely consequences that the potentially adverse development may have for the Enterprise; and

(iii) The proposed course of action the Enterprise will undertake in response to the potentially adverse development, including an explanation as to why such approach is preferred to any other alternative actions by the Enterprise and how such approach will address the concerns of OFHEO.

(3)

Review; further action.

(d)

Level IV supervisory response

Notice to show cause.

(i) A notice of charges to the Enterprise under section 1371 of the 1992 Act (12 U.S.C. 4631) and the procedures in 12 CFR part 1780 commencing an action to order the Enterprise to cease and desist conduct, conditions, or violations specified in the notice to show cause;

(ii) A temporary order to the Enterprise under section 1372 of the 1992 Act (12 U.S.C. 4632) and the procedures in 12 CFR part 1780 to cease and desist from, and take affirmative actions to prevent or remedy harm from, conduct, conditions, or violations specified in the notice to show cause;

(iii) A notice of charges under section 1376 of the 1992 Act (12 U.S.C. 4636) and the procedures in 12 CFR part 1780 commencing imposition of a civil money penalty against the Enterprise; or

(iv) A notice of discretionary reclassification of the Enterprise's capital classification under section 1364(b) of the 1992 Act (12 U.S.C. 4614(b)) and subpart B of this part.

(2)

Review; further action.

§ 1777.12

Other supervisory action.

Notwithstanding the pendency or completion of one or more supervisory responses described in § 1777.11, OFHEO may at any time undertake additional supervisory steps and actions in the form of any informal or formal supervisory tool available to OFHEO under the 1992 Act, including, but not limited to, issuing guidance or directives under section 1313 (12 U.S.C. 4513), requiring reports under section 1314 (12 U.S.C. 4514), conducting other examinations under section 1317 (12 U.S.C. 4517), issuing discretionary reclassification under section 1364 (12 U.S.C. 4614), initiating discretionary action under section 1366(b) (12 U.S.C. 4616(b)), appointing a conservator under section 1369(a) (12 U.S.C. 4619(a)), or initiating administrative enforcement action under sections 1371, 1372, and 1376 (12 U.S.C. 4631, 4632 and 4636). In addition, OFHEO may take any such steps or actions with respect to an Enterprise that fails to make a submission or comply with a directive as required by § 1777.11, or to address an Enterprise's failure to implement an appropriate action in response to a supervisory letter or under an action plan under § 1777.11.

Subpart BCapital Classifications and Orders Under Section 1366 of the 1992 Act

§ 1777.20

Capital classifications.

(a)

Capital classifications after the effective date of section 1365 of the 1992 Act.

(1)

Adequately capitalized.

(i) As of the date specified in the notice of proposed capital classification, holds total capital equaling or exceeding the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(2)

Undercapitalized.

(i) As of the date specified in the notice of proposed capital classification, holds total capital less than the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification,

(3)

Significantly undercapitalized.

(i) As of the date specified in the notice of proposed capital classification, holds core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the critical capital level.

(4)

Critically undercapitalized.

(5)

Discretionary reclassificationdetermination to reclassify.

(i) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized;

(ii) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized; or

(iii) Critically undercapitalized if the Enterprise is otherwise classified as significantly

undercapitalized.

(b)

Duration of reclassification; successive reclassifications.

(2) If the action, inaction, or condition upon which a reclassification was based under paragraph (a)(5) or (c)(5) of this section has not ceased or been eliminated and remedied to OFHEO's satisfaction within such reasonable time as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under such paragraph (a)(5) or (c)(5) of this section into a lower capital classification.

(c)

Capital classifications before the effective date of section 1365 of the 1992 Act.

(1)

Adequately capitalized.

(2)

Undercapitalized.

(i) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level; and

(ii) Is reclassified as undercapitalized by OFHEO under paragraph (c)(5) of this section.

(3)

Significantly undercapitalized.

(i) As of the date specified in the notice of proposed capital classification, held core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the critical capital level.

(4)

Critically undercapitalized.

(5)

Discretionary reclassification.

(i) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized:

(ii) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized; or

(iii) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(d)

Prior approvals.

§ 1777.21

Notice of capital category, and adjustments.

(a)

Notice of capital classification.

(1)

Notice of proposed capital classification.

(ii) Notices proposing to classify or reclassify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice that OFHEO may further reclassify the Enterprise under § 1777.23(c), without additional notice.

(iii) Notices proposing to classify or reclassify an Enterprise as significantly undercapitalized or critically undercapitalized may be combined with a notice under § 1777.24 that OFHEO intends to issue an order under section 1366 of the 1992 Act (12 U.S.C. 4616).

(iv) Notices proposing to classify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice proposing to simultaneously reclassify the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5).

(2)

Response by the Enterprise.

(i) The Enterprise may, within thirty calendar days from receipt of a notice of proposed capital classification, submit a response to OFHEO, unless OFHEO determines the condition of the

Enterprise requires a shorter period or the Enterprise consents to a shorter period.

(ii) The Enterprise's response period may be extended for up to an additional thirty calendar days if OFHEO determines there is good cause for such extension.

(iii) The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed capital classification.

(3)

Classification determination and written notice of capital classification.

(4)

Timing.

(b)

Developments warranting possible change to capital classification

Notice to OFHEO.

(2) OFHEO, in its discretion, will determine whether to issue a new notice of proposed capital classification under paragraph (a) of this section, based on OFHEO's review of the notice under paragraph (b)(1) of this section from the Enterprise and any other information deemed relevant by OFHEO.

§ 1777.22

Limitation on capital distributions.

(a)

Capital distributions in general.

(b)

Capital distributions by an Enterprise that is not adequately capitalized

Prohibited distributions.

(2)

Restricted distributions.

(i) Will enhance the ability of the Enterprise to meet the risk-based capital level and the minimum capital level promptly;

(ii) Will contribute to the long-term financial safety and soundness of the Enterprise; or

(iii) Is otherwise in the public interest.

§ 1777.23

Capital restoration plans.

(a)

Schedule for filing plans

In general.

(2)

Successive capital classifications.

(b)

Contents of capital restoration plan.

(i) Specify the level of capital the Enterprise will achieve and maintain;

(ii) Describe the actions that the Enterprise will take to become classified as adequately capitalized;

(iii) Establish a schedule for completing the actions set forth in the plan;

(iv) Specify the types and levels of activities (including existing and new programs) in which the Enterprise will engage during the term of the plan;

(v) Describe the actions that the Enterprise will take to comply with any mandatory or discretionary requirements to be imposed under Subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623) or subpart B of this part;

(vi) To the extent the Enterprise is required to submit or revise a capital restoration plan as the result of a reclassification of the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5), describe the steps the Enterprise will take to cease or eliminate and remedy the action, inaction, or conditions that caused the reclassification; and

(vii) Provide any other information or discuss any other issues as instructed by OFHEO.

(2) The plan shall include a declaration by the chief executive officer, treasurer, or other officer designated by the Board of Directors of the Enterprise to make such declaration, that the material contained in the plan is true and correct to the best of such officer's knowledge and belief.

(c)

Failure to submit

Failure to submit; submission of unacceptable plan.

(i) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(ii) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(2)

Duration of reclassification.

(3)

Successive reclassifications.

(d)

Order approving or disapproving plan.

(e)

Resubmission.

(f)

Amendment.

(g)

Termination

Termination under the terms of the plan.

(2)

Termination orders.

(h)

Implementation

(i) If OFHEO determines, in its discretion, that an Enterprise has failed to make, in good faith,

reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule thereunder, OFHEO may reclassify the Enterprise:

(A) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(B) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(ii)

Duration of reclassification.

(iii)

Successive reclassifications.

(2)

Administrative enforcement action.

§ 1777.24

Notice of intent to issue an order.

(a)

Orders under section 1366 of the 1992 Act (12 U.S.C. 4616).

(1) Limit any increase in, or reduce, any obligations of the Enterprise, including off-balance sheet obligations;

(2) Limit or eliminate growth of the Enterprise's assets or reduce the amount of the Enterprise's assets;

(3) Acquire new capital, in such form and amount as determined by OFHEO; or

(4) Terminate, reduce, or modify any activity of the Enterprise that OFHEO determines creates excessive risk to the Enterprise.

(b)

Notice of intent to issue an order.

(c)

Contents of notice.

(1) A statement of the Enterprise's capital classification and its minimum capital level or critical

capital level, and its risk-based capital level;

(2) A description of the restrictions, prohibitions, or affirmative actions that OFHEO proposes to impose or require; and

(3) The proposed date when such restrictions or prohibitions would become effective or the proposed date for the commencement and/or completion of the affirmative actions.

§ 1777.25

Response to notice.

(a)

Content of response.

(1) Any relevant information, mitigating circumstances, documentation, or other information the Enterprise wishes OFHEO to consider in support of the Enterprise's position regarding the proposed order; and

(2) Any recommended modification to the proposed order, and justification thereof.

(b)

Time to respond.

(c)

Waiver and consent.

§ 1777.26

Final notice of order.

(a)

Determination and notice.

(b)

Termination or modification.

(c)

Enforcement of order

Judicial enforcement.

(2)

Administrative enforcement.

§ 1777.27

Exhaustion and review.

(a)

Judicial review

Review of certain actions.

(2)

Other review barred.

(b)

Exhaustion of administrative remedies.

(c)

No stay pending review.

§ 1777.28

Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

(a)

Significantly undercapitalized Enterprise.

(1) The amount of core capital of the Enterprise is less than the minimum capital level; and

(2) The alternative remedies available to OFHEO under the 1992 Act are not satisfactory.

(b)

Critically undercapitalized Enterprise

Appointment upon classification.

(2)

Exception.

(i) The appointment of a conservator would have serious adverse effects on economic conditions of

national financial markets or on the financial stability of the housing finance market; and

(ii) The public interest would be better served by taking some other enforcement action authorized under this title.

(c)

Judicial review.

(d)

Termination

Upon reaching the minimum capital level.

(2)

In OFHEO's discretion.

PARTS 1778-1799 [RESERVED]

CHAPTER XVIIICOMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, DEPARTMENT OF THE TREASURY

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Authority:

12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

Source:

80 FR 52382, Aug. 31, 2015, unless otherwise noted.

Subpart AGeneral Provisions

§ 1805.100

Purpose.

The purpose of the Community Development Financial Institutions (CDFI) Program is to promote

economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

§ 1805.101

Summary.

Through the Community Development Financial Institutions Program, the CDFI Fund provides financial and technical assistance to Recipients selected by the CDFI Fund in order to enhance their ability to provide Financial Products, Financial Services and Development Services to and in their Target Markets. Each Recipient must serve an Investment Area(s), a Targeted Population(s), or both. The CDFI Fund will select Recipients to receive financial or technical assistance through a merit-based, qualitative application process. Each Recipient must enter into an Assistance Agreement that requires it to achieve specific performance goals and abide by other terms and conditions pertinent to any assistance received under this part, as well as the Uniform Requirements, as applicable. All CDFI Program awards shall be made subject to funding availability.

§ 1805.102

Relationship to other CDFI Fund programs.

Restrictions on applying for, receiving, and using CDFI Program awards in conjunction with awards under other programs administered by the CDFI Fund (including, but not limited to, the Bank Enterprise Award Program, the Capital Magnet Fund, the CDFI

§ 1805.103

Recipient not instrumentality.

No Recipient (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104

Definitions.

For the purpose of this part, the following terms shall have the following definitions:

Act

et se.

Affiliate

Applicant

Appropriate Federal Banking Agency

Appropriate State Agency

Assistance Agreement

Community Development Financial Institution

CDFI

Community Development Financial Institutions Fund

CDFI Fund

Community Development Financial Institution Intermediary

CDFI Intermediary

Community Development Financial Institutions Program

CDFI Program

Community Facility

Community-Governed

Community-Owned

Community Partner

et se.

Community Partnership

Comprehensive Business Plan

Control or Controlling

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general

partners (or individuals exercising similar functions) of any company; or

(3) Power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

Depository Institution Holding Company

Development Services

Equity Investment

Financial Products

Financial Services

Indian Reservation

Indian Tribe

et se.

Insider

Insured CDFI

Insured Credit Union

Insured Depository Institution

Investment Area

Low-Income

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

Metropolitan Area

Non-Regulated CDFI

Nonvoting Securities or Nonvoting Shares.

(1) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or

preferences of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears:

(2) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(3) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

Recipient

State

State-Insured Credit Union

Subsidiary

Targeted Population

Target Market

Uniform Requirements

Voting Securities

(1) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(2) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

§ 1805.105

Uniform Requirements; Waiver authority.

(a)

Uniform Requirements.

(b)

Waiver authority.

Federal Register

§ 1805.106

OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned applicable, approved OMB Control Numbers associated with the CDFI Fund under 1559.

Subpart BEligibility

§ 1805.200

Applicant eligibility.

(a)

General requirements.

(2)(i) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the CDFI Fund:

(A) Receives a complete application for certification from the entity within the time period set forth in an applicable Notice of Funds Availability; and

(B) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within the period set forth in an applicable Notice of Funds Availability.

(ii) The CDFI Fund will not, however, make a payment of any financial assistance to such an entity before or unless it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(i)(B) of this section, the CDFI Fund reserves the right to require an entity to have been certified as described in § 1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable Notice of Funds Availability.

(3) The CDFI Fund shall require an entity to meet any additional eligibility requirements that the CDFI Fund deems appropriate.

(4) The CDFI Fund, in its sole discretion, shall determine whether an entity fulfills the requirements set forth in this section and § 1805.201(b).

(b)

Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1) through (3) of this section, an entity will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the entity's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the entity.

§ 1805.201

Certification as a Community Development Financial Institution.

(a)

General.

(b)

Eligibility verification.

(1)

Primary mission.

(2)

Financing entity.

(A) Depository Institution Holding Company;

(B) Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union; or

(C) Organization that is deemed by the CDFI Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its certification application. In conducting such analysis, the CDFI Fund may take into consideration an entity's total assets and its use of personnel.

(ii) For the sole purpose of participating as an Eligible CDFI in the CDFI Bond Guarantee Program (see 12 CFR1808), an Affiliate of a Controlling CDFI may be deemed to meet the financing entity requirement of this section by relying on the CDFI Fund's determination that the Controlling CDFI has met said requirement; provided, however, that the CDFI Fund reserves the right, in its sole discretion, to set additional parameters and restrictions on such, which parameters and restrictions shall be set forth in the applicable Notice of Guarantee Availability for a CDFI Bond Guarantee Program application round.

(iii) Further, for the sole purpose of participating as an Eligible CDFI in the CDFI Bond Guarantee Program, the provision of Financial Products, Development Services, and/or other similar financing by an Affiliate of a Controlling CDFI need not be arms-length if such transaction is by and between the Affiliate and the Controlling CDFI, pursuant to an operating agreement that includes management and ownership provisions and is in form and substance acceptable to the CDFI Fund.

(3)

Target Market

General.

(ii)

Investment Area

General.

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2

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3

i.e.,

(B)

Geographic units.

(C)

Designation.

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1

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2

(D)

Distress criteria.

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(E)

Unmet needs.

(F)

Serving Investment Areas.

(iii)

Targeted Population

General.

(B)

Serving Targeted Populations.

(4)

Development Services.

(5)

Accountability.

(6)

Non-government.

(c)

Records and Review.

Subpart CUse of Funds/Eligible Activities

§ 1805.300

Purposes of financial assistance.

The CDFI Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to increase available capital and enhance the ability of a Recipient to provide Financial Products, Financial Services, and Development Services.

§ 1805.301

Eligible activities.

Recipients may use financial assistance provided under this part to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Increase the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate homeownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of consumer loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the CDFI Fund.

§ 1805.302

Restrictions on use of assistance.

(a) A Recipient shall use assistance provided by the CDFI Fund and its corresponding matching funds only for the eligible activities approved by the CDFI Fund and described in the Assistance Agreement.

(b) A Recipient may not distribute assistance to an Affiliate without the CDFI Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Recipient and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.303

Technical assistance.

(a)

General.

(b) The CDFI Fund may provide technical assistance regardless of whether the Recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.600.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the merit-based qualitative review criteria in subpart G of this part, except as otherwise may be provided in the applicable Notice of Funds Availability. In addition, the requirements for matching funds are not applicable to technical assistance requests.

Subpart DInvestment Instruments

§ 1805.400

Investment instrumentsgeneral.

The CDFI Fund will provide financial assistance to a Recipient through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The CDFI Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.401

Forms of investment instruments.

(a)

Equity.

(b)

Grants.

(c)

Loans.

(d)

Deposits and credit union shares.

§ 1805.402

Assistance limits.

(a)

General.

(b)

Additional amounts.

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Subsidiary or Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) A Recipient may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the CDFI Fund prior to the receipt of the application of said Recipient and within the current funding round.

§ 1805.403

Authority to sell.

The CDFI Fund may, at any time, sell its equity investments and loans, provided the CDFI Fund

shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart EMatching Funds Requirements

§ 1805.500

Matching fundsgeneral.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the CDFI Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301

et seq.

§ 1805.501

Comparability of form and value.

(a) Matching funds shall be at least comparable in form (

e.g.,

(b) In the case of a Recipient that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the CDFI Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) A Recipient may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.502

Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the CDFI Fund, in its sole discretion, may permit such Applicant to comply with the matching

requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the CDFI Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) The terms of the severe constraints waiver shall be provided in the applicable Notice of Funds Availability and Assistance Agreement.

§ 1805.503

Time frame for raising match.

Applicants and Recipients shall satisfy matching funds requirements within the period set forth in the applicable Notice of Funds Availability and/or the corresponding Assistance Agreement.

§ 1805.504

Retained earnings.

(a)

General.

(b)

Applicants other than Insured Credit Unions, State-Insured Credit Unions and Insured Depository Institutions.

(1) The increase in retained earnings (meaning, for purposes of § 1805.504(b), revenue minus expenses less any dividend payments) that has occurred over the Applicant's or Recipient's fiscal year as set forth in the applicable Notice of Funds Availability; or

(2) The annual average of such increases that occurred over the Applicant's or Recipient's three

consecutive fiscal years as set forth in the applicable Notice of Funds Availability.

(c)

Insured Credit Unions, State-Insured Credit Unions, and Insured Depository Institutions.

(i) The increase in retained earnings that has occurred over the Applicant's or Recipient's fiscal year as set forth in the applicable Notice of Funds Availability;

(ii) The annual average of such increases that has occurred over the Applicant's or Recipient's three consecutive fiscal years as set forth in the applicable Notice of Funds Availability; or

(iii) The entire retained earnings that have been accumulated since the inception of the Applicant or Recipient, provided that the Assistance Agreement shall require that:

(A) The Recipient shall increase its member shares, non-member shares, outstanding loans and/or other measurable activity as defined in and by an amount that is set forth in an applicable Notice of Funds Availability;

(B) Such increase must be achieved by a date certain set forth in the applicable Notice of Funds Availability;

(C) The level from which the achievement of said increases will be measured will be as of the date set forth in the applicable Notice of Funds Availability; and

(D) Financial assistance shall be paid by the CDFI Fund only as the amount of increases described in paragraph (c)(1)(iii)(A) of this section is achieved.

(2) The CDFI Fund will allow an Applicant or Recipient to utilize the option described in paragraph (c)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant or Recipient will have a high probability of success in achieving said increases to the specified amounts.

Subpart FApplications for Assistance

§ 1805.600

Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in

accordance with the applicable Notice of Funds Availability published in the

Federal Register.

Subpart GEvaluation and Selection of Applications

§ 1805.700

Evaluation and selectiongeneral.

Applicants will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive assistance based on a review process that may include an interview(s) and/or site visit(s) and that is intended to:

(a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;

(b) Consider the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Recipient can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact;

(d) Ensure that Recipients represent a geographically diverse group of Recipients serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States; and

(e) Consider other factors as described in the applicable Notice of Funds Availability.

§ 1805.701

Evaluation of applications.

(a)

Eligibility and completeness.

(b)

Substantive review.

(1) Community development track record, including, in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market and whether it will expand its operations into a new Investment Area or serve a new Targeted Population, offer more

Development Services, Financial Products and/or Financial Services, or increase the volume of its current business;

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills, experience and background of the management team;

(5) Understanding of its market context, including an analysis of the needs of the Investment Area or Targeted Population and a strategy for how the Applicant will attempt to meet those needs; such analysis of current and prospective customers will include the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Loans, Equity Investments, Financial Products, Financial Services and Development Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Program design and implementation plan, including: A plan to coordinate use of a financial assistance award with existing Federal State, local and Tribal government assistance programs, and private sector financial services; A description of how the Applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to the Investment Area or Targeted Population; an assessment of its products and services,

(7) Projections for financial performance, capitalization and the raising of needed external resources, including a detailed description of the Applicant's plans and likely sources of funds to match the amount of financial assistance requested from the CDFI Fund, the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI or a State-Insured Credit Union;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan are consistent with existing economic, community, and housing development plans adopted by or applicable to the Investment Area or Targeted Population and will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the CDFI Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the CDFI Fund's assistance to carry out its Comprehensive Business Plan;

(10) In the case of an Applicant that has previously received assistance under the CDFI Program, the CDFI Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the CDFI Fund, the unexpended balance of assistance, and whether the Applicant will, with additional assistance from the CDFI Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities; and

(11) The CDFI Fund may consider any other factors, as it deems appropriate, in reviewing an application as set forth in an applicable Notice of Funds Availability.

(c)

Consultation with Appropriate Federal Banking Agencies.

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d)

Consultation with Appropriate State Agencies.

(e)

Recipient selection.

Subpart HTerms and Conditions of Assistance

§ 1805.800

Safety and soundness.

(a)

Regulated institutions.

(b)

Non-Regulated CDFIs.

§ 1805.801

Assistance Agreement; sanctions.

(a) Prior to providing any Financial or Technical Assistance, the CDFI Fund and a Recipient shall execute an Assistance Agreement that requires a Recipient to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the CDFI Fund and a Recipient or as provided in paragraph (c) of this section. If a Community Partner or an Affiliate is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement, if deemed appropriate by the CDFI Fund.

(b) A Recipient shall comply with performance goals that have been established or negotiated with the CDFI Fund and which are based upon the Comprehensive Business Plan submitted as part of the Recipient's application. Such performance goals may include measures that require a Recipient to:

(1) Be financially sound;

(2) Be managerially sound;

(3) Maintain appropriate internal controls; and/or

(4) Achieve specific lending, investment, and development service objectives.

Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency, as applicable. Such goals shall be incorporated in, and enforced under, the Recipient's Assistance Agreement. Performance goals for State-Insured Credit Unions may be determined in consultation with the Appropriate State Agency, if deemed appropriate by the CDFI Fund.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act and the CDFI Fund's regulations, or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Recipient (or the Community Partner, if applicable), the CDFI Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Recipient's Comprehensive Business Plan;

(3) Revoke approval of the Recipient's application;

(4) Reduce or terminate the Recipient's assistance;

(5) Require repayment of any assistance that has been distributed to the Recipient;

(6) Bar the Recipient from reapplying for any assistance from the CDFI Fund; or

(7) Take such other actions as the CDFI Fund deems appropriate.

(d) In the case of an Insured CDFI, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the CDFI Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The CDFI Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting

requirements of that agency. The CDFI Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, and to the satisfaction of the CDFI Fund, not later than 30 calendar days after receiving notice from the CDFI Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the CDFI Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of a Recipient in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the CDFI Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the CDFI Fund shall, to the maximum extent practicable, provide the Recipient (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Recipient or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.802

Payment of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any assistance under

this part until a Recipient has satisfied any required conditions set forth in its Assistance Agreement and, if the Recipient is to receive financial assistance, the Recipient has secured in-hand and/or firm commitments for the matching funds required for such assistance pursuant to the applicable Notice of Funds Availability.

§ 1805.803

Data collection and reporting.

(a)

DataGeneral.

(1) Disclose the manner in which CDFI Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b)

Customer profiles.

(c)

Access to records.

(d)

Retention of records.

(e)

Data collection and reporting.

(1)

Audits and Audited Financial Statements.

(ii) For-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants, no later than six months after the end of the Recipient's fiscal year.

(iii) Insured CDFIs are not required to submit financial statements to the CDFI Fund. The CDFI Fund

will obtain the necessary information from publicly available sources. State-Insured Credit Unions must submit to the CDFI Fund copies of the financial statements that they submit to the Appropriate State Agency.

(iv) If multiple for-profit organizations sign the Assistance Agreement: The Recipient may submit combined financial statements and footnotes for the Recipient and other entities that signed the Assistance Agreement as long as the financial statements of each signatory are shown separately (for example, in combining financial statements).

(2)

Annual Report.

(ii) The CDFI Fund will use the Annual Report to collect data to assess the Recipient's compliance with its Performance Goals and the impact of the CDFI Program and the CDFI industry.

(iii) Recipients are responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually are completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Annual Reports, or other documentation that the CDFI Fund may require, the Recipient is responsible for ensuring that the information is submitted timely and complete. The CDFI Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided.

(3) The CDFI Fund's review of the progress of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(4)

Public Access.

(f)

Exchange of information with Appropriate Federal Banking Agencies and Appropriate State

Agencies.

(2) If the information, reports, or records requested by the CDFI Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the CDFI Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The CDFI Fund shall use any information provided by an Appropriate Federal Banking Agency or Appropriate State Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI, State-Insured Credit Union or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the CDFI Fund may require an Insured CDFI, State-Insured Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(5) Nothing in this part shall be construed to permit the CDFI Fund to require an Insured CDFI, State-Insured Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or Appropriate State Agency, or records contained in or related to such report.

(6) The CDFI Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about a Recipient that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the CDFI Fund nor the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be) shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The CDFI Fund, the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be), and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

§ 1805.804

Information.

The CDFI Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.805

Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Recipient shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders. Furthermore, Recipients must comply with the CDFI Fund's Environmental Quality Regulations (12 CFR part 1815) as well as all other federal environmental requirements applicable to federal awards.

§ 1805.806

Conflict of interest requirements.

(a)

Provision of credit to Insiders.

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The board of directors or other governing body of the Recipient shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the CDFI Fund.

(2) A Recipient that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b)

Recipient standards of conduct.

§ 1805.807

Lobbying restrictions.

No assistance made available under this part may be expended by a Recipient to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.808

Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Recipients and Insiders.

§ 1805.809

CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to Control a Recipient by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.810

Limitation on liability.

The liability of the CDFI Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The CDFI Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.811

Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Pt. 1806

PART 1806BANK ENTERPRISE AWARD PROGRAM

Subpart AGeneral Provisions

Sec.

Authority:

12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

Source:

81 FR 52743, Aug. 10, 2016, unless otherwise noted.

Subpart AGeneral Provisions

§ 1806.100

Purpose.

The purpose of the Bank Enterprise Award (BEA) Program is to provide grants to Insured Depository Institutions that provide financial and technical assistance to Community Development Financial Institutions and increase their activities in Distressed Communities.

§ 1806.101

Summary.

Through the BEA Program, the CDFI Fund will provide monetary awards in the form of grants to Applicants selected by the CDFI Fund that increase their investments in or provide other support of CDFIs, increase their lending and investment activities in Distressed Communities, or increase their provision of certain services and assistance. Distressed Communities must meet minimum geographic, poverty, and unemployment criteria. Applicants are selected to receive BEA Program Awards through a merit-based, competitive application process. The amount of a BEA Program

Award is based on the increase in Qualified Activities that are carried out by the Applicant during the Assessment Period. BEA Program Awards are disbursed by the CDFI Fund after the Recipient has successfully completed projected Qualified Activities. Each Recipient will enter into an Award Agreement, which will require it to abide by terms and conditions pertinent to any assistance received under this part, including the requirement that BEA Program Award proceeds must be used for Eligible Activities, and in accordance with the Uniform Administrative Requirements, as applicable. All BEA Program Awards are made subject to funding availability.

§ 1806.102

Relationship to other CDFI Fund programs.

(a)

Restrictions using BEA Program Award in conjunction with other awards.

(2) Other programs include, but not limited to, the Capital Magnet Fund, the CDFI Program, the CDFI Bond Guarantee Program, the Native American CDFI Assistance Program, and the New Markets Tax Credit Program, are as set forth in the applicable notice of funding opportunity or Notice of Allocation Availability.

(b)

Prohibition against double funding.

(2) An Applicant that is a CDFI may not receive a BEA Program Award, either directly or through a community partnership if it has:

(i) Received a CDFI Program award within the preceding 12-month period, or has a CDFI Program application pending; or

(ii) Ever received a CDFI Program award based on the same activity during the same semiannual period for which the institution seeks a BEA Program Award.

§ 1806.103

Definitions.

For purposes of this part, the following terms shall have the following definitions:

Act

et seq.

Affordable Housing Development Loan

Affordable Housing Loan

Applicant

Appropriate Federal Banking Agency

Assessment Period

Award Agreement

Bank Enterprise Award

BEA Program Award

Bank Enterprise Award Program

BEA Program

Baseline Period

CDFI Partner

CDFI Related Activities

CDFI Support Activity

Commercial Loans and Investments

Commercial Real Estate Loan

Community Development Financial Institution

CDFI

Community Development Financial Institutions Fund

CDFI Fund

Community Services

(1) Provision of Technical Assistance and financial education to Eligible Residents regarding managing their personal finances;

(2) Provision of Technical Assistance and consulting services to newly formed small businesses and

nonprofit organizations located in the Distressed Community;

(3) Provision of Technical Assistance and financial education to, or servicing the loans of, homeowners who are Eligible Residents and meet Low- and Moderate-Income requirements; and

(4) Other services provided to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in a Distressed Community, as deemed appropriate by the CDFI Fund, and other comparable services as may be specified by the CDFI Fund in the applicable NOFA;

Consumer Loans

Deposit Liabilities

e.g.,

e.g.,

Development Service Activities

Distressed Community

Distressed Community Financing Activities

(1) Consumer Loans; or

(2) Commercial Loans and Investments;

Education Loan

Electronic Transfer Account

ETA

(1) Be an individually owned account at a Federally insured financial institution;

(2) Be available to any individual who receives a Federal benefit, wage, salary, or retirement payment;

(3) Accept electronic Federal benefit, wage, salary, and retirement payments and such other deposits as a financial institution agrees to permit;

(4) Be subject to a maximum price of $3.00 per month;

(5) Have a minimum of four cash withdrawals and four balance inquiries per month, to be included in

the monthly fee, through:

(i) The financial institution's proprietary (on-us) automated teller machines (ATMs);

(ii) Over-the-counter transactions at the main office or a branch of the financial institution; or

(iii) Any combination of on-us ATM access and over-the-counter access at the option of the financial institution;

(6) Provide the same consumer protections that are available to other account holders at the financial institution, including, for accounts that provide electronic access, Regulation E (12 CFR part 205) protections regarding disclosure, limitations on liability, procedures for reporting lost or stolen cards, and procedures for error resolution;

(7) For financial institutions that are members of an on-line point-of-sale (POS) network, allow on-line POS purchases, cash withdrawals, and cash back with purchases at no additional charge by the financial institution offering the ETA;

(8) Require no minimum balance, except as required by Federal or State law;

(9) At the option of the financial institution, be either an interest-bearing or a non-interest-bearing account; and

(10) Provide a monthly statement.

Eligible Activities

Eligible Resident

Equity Investment

Equity-Like Loan

Financial Services

Geographic Units

Home Improvement Loan

Indian Reservation

et seq.

Individual Development Account

IDA

Insured Depository Institution

Integrally Involved

i.e.,

Low- and Moderate-Income or Low- and Moderate-Income requirements

Metropolitan Area

Notice of Funding Availability

NOFA

Priority Factor

(1) Each subcategory within the Distressed Community Financing Activities category of Qualified Activities; or

(2) Each activity-type within the Service Activities and CDFI Related Activities categories of Qualified Activities.

(3) A priority factor represents the CDFI Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

Project Investment

Qualified Activities

Recipient

Service Activities

Small Business Loan

Small Dollar Consumer Loan

State

Subsidiary

Targeted Financial Services

Targeted Retail Savings/Investment Products

Technical Assistance

Unit of General Local Government

§ 1806.104

Uniform Administrative Requirements; waiver authority.

(a)

Uniform Administrative Requirements.

(b)

Waiver authority.

Federal Register

§ 1806.105

OMB control number.

The collections of information contained in this part have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned the applicable, approved OMB Control Numbers associated with the CDFI Fund under 1559.

Subpart BEligibility

§ 1806.200

Applicant eligibility.

An entity that is an Insured Depository Institution is eligible to apply for a BEA Program Award if the CDFI Fund receives a complete BEA Program Award application by the deadline set forth in the applicable Notice of Funding Availability (NOFA). Additional eligibility requirements are set forth in the applicable NOFA.

Subpart CUse of Funds/Eligible Activities

§ 1806.300

Eligible Activities.

Recipients of BEA Program Awards must use their payments for the following Eligible Activities:

(a) CDFI Related Activities;

(b) Distressed Community Financing Activities; and

(c) Service Activities, and to comply with the Uniform Administrative Requirements as further described in the applicable NOFA and the Award Agreement.

§ 1806.301

Restrictions of use of award.

A Recipient may not distribute BEA Program Award funds to an Affiliate without the CDFI Fund's prior written consent.

Subpart DAward Determinations

§ 1806.400

General.

The amount of a BEA Program Award shall be based on the Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period, as set forth in the applicable NOFA. When determining this increase, Applicants must consider all

§ 1806.401

Community eligibility and designation.

(a)

General.

(b)

Minimum area and eligibility requirements.

(1)

Minimum area requirements.

(i) Must be an area that is located within the jurisdiction of one (1) Unit of General Local Government;

(ii) The boundaries of the area must be contiguous; and

(iii) The area must:

(A) Have a population, as determined by the most recent U.S. Bureau of the Census data available,

of not less than 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; or

(B) Have a population, as determined by the most recent U.S. Bureau of the Census data available, of not less than 1,000 in any other case; or

(C) Be located entirely within an Indian Reservation.

(2)

Eligibility requirements.

(i) At least 30 percent of the Eligible Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census or in other sources as set forth in guidance issued by the CDFI Fund;

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recently published data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census-Share calculation method, or in other sources as set forth in guidance issued by the CDFI Fund; and

(iii) Such additional requirements as may be specified by the CDFI Fund in the applicable NOFA.

(c)

Area designation.

(1) Selecting Geographic Units which individually meet the minimum area and eligibility requirements set forth in paragraph (b) of this section; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area and eligibility requirements set forth in paragraph (b) of this section, provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d)

Designation.

§ 1806.402

Measuring and reporting Qualified Activities.

(a)

General.

(b)

Reporting Qualified Activities.

(1) If an Applicant elects to apply for an award in the CDFI Related Activities category, it may elect to report on

(2) If an Applicant elects to apply for an award in the Distressed Community Financing Activities category, the Applicant must report on the following subcategories:

(i) Aggregate Consumer Loans; or

(ii) Aggregate Commercial Loans and Investments; or

(iii) Both paragraphs (b)(2)(i) and (ii) separately; unless the Applicant provides a reasonable explanation, acceptable to the CDFI Fund, in its sole discretion, as to why the Applicant cannot report on aggregated activities in such subcategories.

(3) If an Applicant elects to apply for an award in the Service Activities category, it may elect to report on one or more types of activities within the Service Activities category.

(c)

Area served.

(1) Undertaken in the Distressed Community; or

(2) Provided to Eligible Residents or enterprises that are Integrally Involved in the Distressed Community.

(d)

Certain limitations on Qualified Activities.

(e)

Measuring the value of Qualified Activities.

(1) Equity Investments, Equity-Like Loans, loans, grants and certificates of deposits, at the original amount of such Equity Investments, Equity-Like Loans, loans, grants or certificates of deposits.

Where a certificate of deposit matures and is then rolled over during the Baseline Period or the Assessment Period, as applicable, the CDFI Fund will assess the value of the full amount of the rolled-over deposit. Where an existing loan is refinanced (meaning, a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the CDFI Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant;

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described in paragraphs (e)(3)(i) and (ii) of this section:

(i) The Applicant shall calculate the net change in deposits during the Baseline Period by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Applicant shall calculate the net change in such deposits during the Assessment Period by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(4) Financial Services and Targeted Financial Services based on the predetermined amounts as set forth by the CDFI Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the CDFI Fund has established a predetermined value), Community Services, and CDFI Support Activities consisting of Technical Assistance based on the administrative costs of providing such services.

(f)

Closed transactions.

(1) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively;

and

(2) Constitutes a legally binding agreement between the Applicant and a borrower or investee, which agreement specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the CDFI Fund); and

(3) An initial cash disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction (as determined by the CDFI Fund), unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the CDFI Fund.

(g)

Reporting period.

§ 1806.403

Estimated award amounts.

(a)

General.

(b)

Award percentages.

(c)

Calculating the estimated award amount for Qualified Activities.

i.e.,

(2) The estimated award amount for the Distressed Community Financing Activities category will be equal to the applicable award percentage of the weighted value of each subcategory of Distressed Community Financing Activities (

i.e.,

(i) Subtracting the Baseline Period value of such subcategory from the Assessment Period value of

such subcategory to yield a difference; and

(ii) Multiplying the difference by the applicable Priority Factor (as set forth in the applicable NOFA).

(3) The estimated award amount for the Service Activities category will be equal to the applicable award percentage of the weighted value of each activity type between the Baseline Period and Assessment Period. The weighted value of the applicable activity type shall be calculated by:

(i) Subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a difference; and

(ii) Multiplying the difference by the applicable Priority Factor (as set forth in the applicable NOFA).

(d)

Estimated award eligibility review.

§ 1806.404

Selection process; actual award amounts.

(a)

Sufficient funds available to cover estimated awards.

(b)

Insufficient funds available to cover estimated awards.

(c)

Priority of awards.

e.g.,

(1)

First priority.

(2)

Second priority.

(3)

Third priority.

(d)

Calculating actual award amounts.

(e)

Unobligated or deobligated funds.

(1) To select Applicants not previously selected, using the calculation and selection process contained in this part;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(f)

Limitation.

§ 1806.405

Applications for BEA Program Awards.

(a)

Notice of funding availability; applications.

(b)

Application contents.

(1) A completed electronic application module that reports the increases in Qualified Activities actually carried out during the Assessment Period as compared to those carried out during the Baseline Period. If an Applicant has merged with another institution during the Assessment Period, it must determine the Baseline Period amounts and Assessment Period amounts of the Qualified Activities of the merged institutions, and report the increase;

(2) An electronic application module which includes transactions to be considered for award calculation purposes. The transactions will include Qualified Activities that were closed during the Assessment Period. Applicants shall describe the original amount, census tract served (if applicable), dates of execution, initial disbursement, and final disbursement of the instrument for each transaction;

(3) Documentation of Qualified Activities that meets the required thresholds and conditions

described in § 1806.402(f) and the applicable NOFA;

(4) Information necessary for the CDFI Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(5) Certifications, as described in the applicable NOFA and BEA Program Award application, that the information provided to the CDFI Fund is true and accurate and that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(6) In the case of an Applicant that engaged in Service Activities, or Distressed Community Financing Activities, the Applicant must confirm, by submitting documentation as described in the applicable NOFA and BEA Program application, the Service Activities or Distressed Community Financing Activities were provided to:

(i) Eligible Residents; or

(ii) A business located in a Distressed Community.

(7) Information that indicates that each CDFI to which an Applicant has provided CDFI Support Activities is Integrally Involved in a Distressed Community, as described in the applicable NOFA and BEA Program application; and

(8) Any other information requested by the CDFI Fund, or specified by the CDFI Fund in the applicable NOFA or the BEA Program application, in order to document or otherwise assess the validity of information provided by the Applicant to the CDFI Fund.

Subpart ETerms and Conditions of Assistance

§ 1806.500

Award Agreement; sanctions.

(a)

General.

(1) Must carry out its Eligible Activities in accordance with applicable law, the approved BEA Program application, and all other applicable requirements;

(2) Must comply with such other terms and conditions that the CDFI Fund may establish;

(3) Will not receive any BEA Program Award payment until the CDFI Fund has determined that the Recipient has fulfilled all applicable requirements;

(4) Must comply with performance goals that have been established by the CDFI Fund. Such performance goals will include measures that require the Recipient to use its BEA Program Award funds for Eligible Activities; and

(5) Must comply with all data collection and reporting requirements. Each Recipient must submit to the CDFI Fund such information and documentation that will permit the CDFI Fund to review the Recipient's progress in satisfying the terms and conditions of its Award Agreement, including:

(i)

Annual report.

(ii)

Financial statement.

(b)

Sanctions.

(c)

Compliance with other CDFI Fund awards.

(d)

Notice.

§ 1806.501

Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Recipient must comply with all applicable Federal, State, and local laws, regulations (including but not limited to the Uniform Administrative Requirements, ordinances, and Executive Orders).

§ 1806.502

Fraud, waste, and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.503

Books of account, records, and government access.

(a) A Recipient shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the CDFI Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Recipient's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

(b) The Award Agreement provides that the provisions of the Act, this part, and the Award Agreement are enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (b) precludes the CDFI Fund from directly enforcing the Award Agreement as provided for under the terms of the Act.

(c) The CDFI Fund will notify the Appropriate Federal Banking Agency before imposing any sanctions on a Recipient that is examined by or subject to the reporting requirements of that agency. The CDFI Fund will not impose a sanction described in § 1806.500(b) if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the CDFI Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the Recipient; or

(ii) Impede or interfere with an enforcement action against that Recipient by the Appropriate Federal Banking Agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (c)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (c)(3) of this section would be as effective as the sanction proposed by the CDFI Fund in securing compliance and deterring future noncompliance.

(d) Prior to imposing any sanctions pursuant to this section or an Award Agreement, the CDFI Fund shall, to the maximum extent practicable, provide the Recipient with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Recipient to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.504

Retention of records.

A Recipient must comply with all record retention requirements as set forth in the Uniform Administrative Requirements.

Pt. 1807

PART 1807CAPITAL MAGNET FUND

Subpart AGeneral Provisions

Sec.

1807.100

Purpose.

1807.101

Summary.

1807.102

Authority:

12 U.S.C. 4569.

Source:

81 FR 6437, Feb. 8, 2016, unless otherwise noted.

Subpart AGeneral Provisions

§ 1807.100

Purpose.

The purpose of the Capital Magnet Fund (CMF) is to attract private capital for and increase investment in Affordable Housing Activities and related Economic Development Activities.

§ 1807.101

Summary.

(a) Through the CMF, the CDFI Fund competitively awards grants to CDFIs and qualified Nonprofit Organizations to leverage dollars for:

(1) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing primarily for Low-Income Families; and

(2) Financing Economic Development Activities.

(b) The CDFI Fund will select Recipients to receive CMF Awards through a merit-based, competitive application process. CMF Awards may only be used for eligible uses set forth in subpart C of this part. Each Recipient will enter into an Assistance Agreement that will require it to leverage the CMF Award amount and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1807.102

Relationship to other CDFI Fund programs.

Restrictions on applying for, receiving, and using CMF Awards in conjunction with awards under other programs administered by the CDFI Fund (including, but not limited to, the Bank Enterprise Award Program, the CDFI Program, the CDFI Bond Guarantee Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit Program) are as set forth in the applicable Notice of Funds Availability, Notice of Guarantee Availability, or Notice of Allocation Availability.

§ 1807.103

Recipient not instrumentality.

No Recipient shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1807.104

Definitions.

For the purpose of this part:

Act

Affiliate

Affordable Housing

Affordable Housing Activities

Affordable Housing Fund

(1) Managed by the Recipient; and

(2) Uses its capital to finance Affordable Housing Activities;

Applicant

Appropriate Federal Banking Agency

Appropriate State Agency

Assistance Agreement

Capital Magnet Fund (or CMF)

CMF Award

Certified Community Development Financial Institution (or Certified CDFI)

Committed

Community Development Financial Institutions Fund (or CDFI Fund)

et seq.;

Community Service Facility

Concerted Strategy

Control

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other

persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company;

Depository Institution Holding Company

Development

Direct Administrative Expenses

Economic Development Activity

Effective Date

Eligible-Income

(1) Having, in the case of owner-occupied Housing units, annual income not in excess of 120 percent of the area median income adjusted for Family size in the same manner as HUD makes these adjustments for its other published income limits; and

(2) Having, in the case of rental Housing units, annual income not in excess of 120 percent of the area median income, adjusted for Family size in the same manner as HUD makes these adjustments for its published income limits;

Eligible Project Costs

Extremely Low-Income

(1) Having, in the case of owner-occupied Housing units, income not in excess of 30 percent of the area median income, adjusted for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes and

(2) Having, in the case of rental Housing units, income not in excess of 30 percent of the area median income, adjusted for Family size, as determined by HUD, except that HUD may establish

income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes;

Family or Families

HOME Program

et seq.;

Homeownership

(1) Except as otherwise provided in paragraphs (1)(i), (ii), and (iii) of this definition, the land may be owned in fee simple or the homeowner may have a 99-year ground lease;

(i) For Housing located on Indian trust or restricted Indian lands, the ground lease must be for 50 years or more;

(ii) For Housing located in Guam, the Northern Mariana Islands, the U. S. Virgin Islands, and American Samoa, the ground lease must be 40 years or more;

(iii) For manufactured housing, the ground lease must be for a minimum period of 10 years or such other applicable time period regarding location set forth in this definition of Homeownership at the time of purchase by the homeowner;

(2) Ownership interest may not merely consist of a right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made);

(3) Ownership interest may only be subject to the restrictions on resale permitted under the Assistance Agreement and this part; mortgages, deeds of trust, or other liens or instruments securing debt on the property; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest;

Housing

HUD

et seq.;

In Conjunction With Affordable Housing

(1) Physically proximate to; and

(2) Reasonably available to residents of Affordable Housing that is subject to Affordable Housing Activities. For a Metropolitan Area, In Conjunction With means located within the same census tract or within 1 mile of such Affordable Housing. For a Non-Metropolitan Area, In Conjunction With means located within the same county, township, or village, or within 10 miles of such Affordable Housing;

Insured CDFI

Insured Credit Union

et seq.;

Insured Depository Institution

Investment Period

Leveraged Costs

Loan Guarantee

Loan Loss Reserves

Low-Income

(1) Having, in the case of owner-occupied Housing units, income not in excess of 80 percent of area median income, adjusted for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes; and

(2) Having, in the case of rental Housing units, income not in excess of 80 percent of area median income, adjusted for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes;

Low-Income Area or LIA

Low Income Housing Credits (or LIHTCs)

Metropolitan Area

Multi-family housing

Non-Metropolitan Area

Nonprofit Organization

(1) Designated as a nonprofit or not-for-profit entity under the laws of the organization's State of formation; and

(2) Exempt from Federal income taxation pursuant to the Internal Revenue Code of 1986;

Participating Jurisdiction

Payment

Preservation

(1) Activities to refinance, with or without Rehabilitation, Single-family housing or Multi-family housing (rental) mortgages that, at the time of refinancing, are subject to affordability and use restrictions under the LIHTC statute or under State or Federal affordable housing programs, including but not limited to, the HOME Program, properties with Federal project-based rental assistance, or the USDA rental housing programs, hereinafter referred to as similar State or Federal affordable housing programs, where such refinancing has the effect of extending the term of any existing affordability and use restrictions on the properties by a minimum 10 years or as otherwise specified in the Assistance Agreement;

(2) Activities to refinance and acquire Single-family housing or Multi-family housing that, at the time of refinancing or acquisition, were subject to affordability and use restrictions under similar State or Federal affordable housing programs or under the LIHTC statute, by the former tenants of such properties, where such refinancing has the effect of extending the term of any existing affordability and use restrictions on the properties by a minimum 10 years or as otherwise specified in the Assistance Agreement;

(3) Activities to refinance the mortgages of owner-occupied, Single-family housing that, at the time of refinancing, are subject to affordability and use restrictions under similar State or Federal affordable housing programs, where such refinancing has the effect of extending the term of any existing affordability and use restrictions on the properties by a minimum 10 years or as otherwise specified in the Assistance Agreement;

(4) Activities to acquire Single-family housing or Multi-family housing, with or without Rehabilitation, with the commitment to subject the properties to the affordability qualifications set forth in subpart D of this part; or

(5) Activities to refinance, with or without Rehabilitation, Single-family housing or Multi-family housing, with the commitment to subject the properties to the affordability qualifications set forth in subpart D of this part;

Program Income

Project

Project Completion

Purchase

Recipient

Rehabilitation

Revolving Loan Fund

Risk-Sharing Loan

e.g.,

Service Area

Single-family housing

State

State-Insured Credit Union

Subsidiary

Underserved Rural Area

(1) A Non-Metropolitan Area that:

(i) Qualifies as a Low-Income Area; and

(ii) Is experiencing economic distress evidenced by 30 percent or more of resident households with one or more of these four housing conditions in the most recent census for which data are available:

(A) Lacking complete plumbing;

(B) Lacking complete kitchen;

(C) Paying 30 percent or more of income for owner costs or tenant rent; or

(D) Having more than 1 person per room;

(2) An area as specified in the applicable NOFA and/or Assistance Agreement;

Uniform Administrative Requirements

Very Low-Income

(1) Having, in the case of owner-occupied Housing, income not greater than 50 percent of the area median income with adjustments for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes; and

(2) Having, in the case of rental Housing, income not greater than 50 percent of the area median income, with adjustments for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes.

§ 1807.105

Waiver authority.

The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the

CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the

Federal Register

§ 1807.106

OMB control number.

The OMB control number for the CMF Award application is 1559-0036. The compliance date requirements for the collection of information in § 1807.902 is stayed indefinitely, pending

§ 1807.107

Applicability of regulations for CMF Awards.

As of February 8, 2016, the regulations of this part are applicable for CMF Awards made pursuant to Notices of Funds Availability published after February 8, 2016.

Subpart BEligibility

§ 1807.200

Applicant eligibility.

(a)

General requirements.

(1) A Certified CDFI. An entity may meet the requirements described in this paragraph (a)(1) if it is:

(i) A Certified CDFI, as set forth in 12 CFR 1805.201,

(ii) A Certified CDFI that has been in existence as a legally formed entity as set forth in the applicable Notice of Funds Availability (NOFA); or

(2) A Nonprofit Organization having as one of its principal purposes the development or management of affordable housing. An entity may meet the requirements described in this paragraph (a)(2) if it:

(i) Has been in existence as a legally formed entity as set forth in the applicable NOFA;

(ii) Demonstrates, through articles of incorporation, by-laws, or other board-approved documents,

that the development or management of affordable housing are among its principal purposes; and

(iii) Can demonstrate that a certain percentage, set forth in the applicable NOFA, of the Applicant's total assets are dedicated to the development or management of affordable housing.

(b)

Eligibility verification.

Subpart CEligible Purposes; Eligible Activities; Restrictions

§ 1807.300

Eligible purposes.

Each Recipient must use its CMF Award for the eligible activities described in § 1807.301 so long as such eligible activities increase private capital for and increase investment in:

(a) Development, Preservation, Rehabilitation, and/or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income, and Low-Income Families; and/or

(b) Economic Development Activities.

(1) Economic Development Activity must support Affordable Housing;

(2) The Recipient may undertake Economic Development Activity In Conjunction With Affordable Housing Activities that are undertaken by parties other than the Recipient;

(3) If the Recipient uses its CMF Award to fund an Economic Development Activity In Conjunction With Affordable Housing Activity, it must track the resulting Affordable Housing, as set forth in subpart D of this part, to the extent the Affordable Housing was financed by the CMF Award. For the purposes of meeting the 10-year affordability period requirement, Recipients are not required to track Affordable Housing that was financed by sources other than the CMF Award.

§ 1807.301

Eligible activities.

The Recipient must use its CMF Award to finance and support Affordable Housing Activities and/or Economic Development Activities through the following eligible activities:

(a) To capitalize Loan Loss Reserves;

(b) To capitalize a Revolving Loan Fund;

(c) To capitalize an Affordable Housing Fund;

(d) To capitalize a fund to support Economic Development Activities;

(e) To make Risk-Sharing Loans; and

(f) To provide Loan Guarantees.

§ 1807.302

Restrictions on use of CMF Award.

(a) The Recipient may not use its CMF Award for the following:

(1) Political activities;

(2) Advocacy;

(3) Lobbying, whether directly or through other parties;

(4) Counseling services (including homebuyer or financial counseling);

(5) Travel expenses;

(6) Preparing or providing advice on tax returns;

(7) Emergency shelters (including shelters for disaster victims);

(8) Nursing homes;

(9) Convalescent homes;

(10) Residential treatment facilities;

(11) Correctional facilities; or

(12) Student dormitories.

(b) The Recipient shall not use the CMF Award to finance or support Projects that include:

(1) The operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; or

(2) Farming activities (within the meaning of Internal Revenue Code (IRC) section 2032A(e)(5)(A) or (B)), if, as of the close of the taxable year of the taxpayer conducting such trade or business, the

sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such a trade or business, exceeds $500,000.

(c) In any given application round, no more than 30 percent of a CMF Award may be used for Economic Development Activities.

(d) Any Recipient that uses its CMF Award for a Loan Guarantee or Loan Loss Reserves must ensure the underlying loan(s) are made to support Affordable Housing Activities and Economic Development Activities. The Affordable Housing resulting from the Recipient's Loan Guarantee or Loan Loss Reserve shall be tracked for 10 years, as set forth in subpart D of this part.

(e) If loans that are made pursuant to a Loan Guarantee or Loan Loss Reserves are repaid during the Investment Period, the Recipient must use the repaid funds for Loan Guarantees or Loan Loss Reserves targeted to the income population (Extremely Low-Income, Very Low-Income, Low-Income) set forth in the Recipient's Assistance Agreement, for the duration of the Investment Period.

(f) The Recipient may not use more than five (5) percent of its CMF Award for Direct Administrative Expenses.

§ 1807.303

Authorized uses of Program Income.

(a) Program Income earned in the form of principal and equity repayments must be used by the Recipient for the approved, eligible CMF Award uses as further set forth in the Assistance Agreement for the duration of the Investment Period.

(b) Program Income earned in the form of interest payments, and all other forms of Program Income (except for that which is earned as described in paragraph (a) of this section, must be used by the Recipient as set forth in the Assistance Agreement and in accordance with 2 CFR part 1000.

Subpart DQualification as Affordable Housing

§ 1807.400

Affordable Housinggeneral.

Each Recipient that uses its CMF Award for Affordable Housing Activities must ensure that 100 percent of Eligible Project Costs are attributable to Affordable Housing; meaning, that they comply with the affordability qualifications set forth in this subpart for Eligible-Income Families. Further, as a subset of said 100 percent, greater than 50 percent of the Eligible Project Costs must be attributable to Affordable Housing that comply with the affordability qualifications set forth in this subpart for Low-Income, Very Low-Income, or Extremely Low-Income Families, or as further set forth in the applicable NOFA and/or Assistance Agreement.

§ 1807.401

Affordable HousingRental Housing.

To qualify as Affordable Housing, each rental Multi-family housing Project financed with CMF Award must have at least 20 percent of the units occupied by any combination of Low-Income, Very Low-Income, or Extremely Low-Income Families and must comply with the rent limits set forth herein. However, the CDFI Fund may require a greater percentage of the units per Project to be income-targeted and/or require a specific targeted income commitment in any given application round, as set forth in the NOFA and Assistance Agreement for that application round.

(a)

Rent limitation.

(1) For an Eligible-Income Family, 30 percent of the annual income of a Family whose annual income equals 120 percent of the area median income, with adjustments for number of bedrooms in the unit, as set forth in IRC section 42(g)(2).

(2) For a Low-Income Family, 30 percent of the annual income of a Family whose annual income equals 80 percent of the area median income, with adjustments for number of bedrooms in the unit, as set forth in IRC section 42(g)(2). If the unit or tenant receives Federal or State rental subsidy, and the Family pays as a contribution towards rent not more than 30 percent of the Family's income, the maximum rent (

i.e.,

(3) For a Very Low-Income Family, 30 percent of the annual income of a Family whose annual income equals 50 percent of the area median income, with adjustments for number of bedrooms in the unit as described in paragraph (a) of this section. If the unit or tenant receives Federal or State rental subsidy, and the Family pays as a contribution towards rent not more than 30 percent of the Family's income, the maximum rent (

i.e.,

(4) For an Extremely Low-Income Family, 30 percent of the annual income of a Family whose annual income equals 30 percent of the area median income, with adjustments for number of bedrooms in the unit as described in paragraph (a) of this section. If the unit or tenant receives Federal or State rental subsidy, and the Family pays as a contribution toward rent not more than 30 percent of the Family's income, the maximum rent (

i.e.,

(b)

Nondiscrimination against rental assistance subsidy holders.

(c)

Initial rent schedule and utility allowances.

(d)

Periods of affordability.

(e)

Subsequent rents during the affordability period.

(f)

Tenant income determination.

(2) One of the following two definitions of annual income must be used to determine whether a Family is income-eligible:

(i) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS)

Form 1040 series for individual Federal annual income tax purposes; or

(ii) Annual Income as defined at 24 CFR 5.609 (except that when determining the income of a homeowner for an owner-occupied Rehabilitation Project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603).

(3) Although either of the above two definitions of annual income is permitted, in order to calculate adjusted income, exclusions from income set forth at 24 CFR 5.611 shall be applied.

(4) The CDFI Fund reserves the right to deem certain government programs, under which a Low-Income Family is a recipient, as income eligible for purposes of meeting the tenant income requirements under this section.

(g)

Over-income tenants.

(2) Tenants whose incomes no longer qualify must pay rent no greater than the lesser of the amount payable by the tenant under State or local law or 30 percent of the Family's annual income, except if the gross rent of a unit is subject to the restrictions in IRC section 42(g)(2) or the restrictions in an extended low-income housing commitment under IRC section 42(h)(6), then the tenants of that unit must pay rent governed by those restrictions. Tenants who no longer qualify as Eligible-Income are not required to pay rent in excess of the market rent for comparable, unassisted units in the neighborhood.

(3) If the income of a tenant of a CMF-financed or assisted unit no longer qualifies, the Recipient may designate another unit, within the CMF-financed or assisted Project, as a replacement unit that meets the affordability qualifications for the same income category as the original unit, as further set forth in the Recipient's Assistance Agreement. If there is not an available replacement unit, the Recipient must fill the first available vacancy with a tenant that meets the affordability qualifications for the same income category of the original unit as necessary to maintain compliance with

§ 1807.402

Affordable HousingHomeownership.

(a)

Purchase with or without Rehabilitation.

(1) The Housing must be Single-family housing.

(2) The Single-family housing price does not exceed 95 percent of the median purchase price for the area as used in the HOME Program and as determined by HUD and the applicable Participating Jurisdiction.

(3) The Single-family housing must be purchased by a qualifying Family as set forth in § 1807.400. The Single-family housing must be the principal residence of the Family throughout the period described in paragraph (a)(4) of this section.

(4)

Periods of affordability.

(5)

Resale.

i.e.,

(b)

Rehabilitation not involving Purchase.

(1) The estimated value of the Single-family housing, after Rehabilitation, does not exceed 95 percent of the median purchase price for the area, as used in the HOME Program and as determined by the applicable Participating Jurisdiction; or

(2) The Single-family housing is the principal residence of a qualifying Family as set forth in § 1807.400, at the time that the CMF Award is Committed to the Single-family housing.

(3) Single-family housing under this paragraph (b) must meet the affordability requirements for at least 10 years after Rehabilitation is completed or meet the resale provisions of paragraph (a)(5) of this section.

(c)

Ownership interest.

(d)

New construction without Purchase.

(e)

Converting rental units to Homeownership units for existing tenants.

Subpart ELeveraged Costs; Eligible Project Costs; Commitment Requirements

§ 1807.500

Leveraged Costs; Eligible Project Costs.

(a) Each CMF Award must result in Eligible Project Costs in an amount that equals at least 10 times the amount of the CMF Award or some higher standard established by the CDFI Fund in the Recipient's Assistance Agreement. Such Eligible Project Costs must be for Affordable Housing Activities and Economic Development Activities, as set forth in the Assistance Agreement.

(b)

Leveraged Costs.

(2) The Recipient must report to the CDFI Fund all Leveraged Costs, with the following limitations:

(i) No costs attributable to prohibited uses as set forth in § 1807.302(a) and (b) may be reported as Leveraged Costs;

(ii) All Leveraged Costs attributable to Affordable Housing Activities must be for Affordable Housing, as set forth in § 1807.401 or § 1807.402, and as further described in the Assistance Agreement;

(iii) All eligible Leveraged Costs attributable to Economic Development Activities shall be described in the Assistance Agreement.

(c) Recipients must report Leveraged Costs information through forms or electronic systems provided by the CDFI Fund. Consequently, Recipients must maintain appropriate documentation, such as audited financial statements, wire transfers documents, pro-formas, and other relevant records, to support such reports.

§ 1807.501

Commitments; Payments.

(a) The CMF Award must be Committed by the Recipient for use by the date designated in its Assistance Agreement.

(b) The Recipient must evidence such commitment with a written, legally binding agreement to provide CMF Award proceeds to the qualifying Family, developer or project sponsor for a Project whose:

(1) Construction can reasonably be expected to start within 12 months of the commitment agreement date;

(2) Property title will be transferred within 6 months of the commitment agreement date; or

(3) Construction schedule ensures Project Completion within 5 years of a date specified in the Assistance Agreement.

(c) The CDFI Fund will make Payment of CMF Award based on a deployment schedule contained in the CMF Award application, in addition to any other documentation and/or forms that the CDFI Fund may require.

(d) Upon receipt of CMF Award, the Recipient must make an initial disbursement of said CMF Award by the date designated in its Assistance Agreement. The CDFI Fund may make Payment of CMF Award in a lump sum or other manner, as determined appropriate by the CDFI Fund. The CDFI Fund will not provide any Payment until the Recipient has satisfied all

§ 1807.502

CMF Award limits.

An eligible Applicant and its Subsidiaries and Affiliates may not be awarded more than 15 percent of the aggregate funds available for CMF Awards during any year.

§ 1807.503

Project Completion; Property standards.

(a) Upon Project Completion, the Project must be placed into service by the date designated in the Assistance Agreement. Project Completion occurs, as determined by the CDFI Fund, when:

(1) All necessary title transfer requirements and construction work have been performed;

(2) The property standards of paragraph (b) of this section have been met; and

(3) The final drawdown of the CMF Award has been made to the project sponsor or developer;

(4) When a CMF Award is used for Preservation, Project Completion occurs when the refinance and/or Rehabilitation is completed in addition to the requirements set forth in this paragraph (a).

(b) By the Project Completion date, the Project must meet the requirements of this part, including the following property standards (which must be met for a period of at least 10 years after the Project Completion date):

(1) Projects that are constructed or Rehabilitated with a CMF Award must meet all applicable State and local codes, Rehabilitation standards, ordinances, and zoning requirements at the time of Project Completion or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable) of the International Code Council.

(2) In addition, Projects must meet the following requirements:

(i)

Accessibility.

(ii)

Disaster mitigation.

e.g.,

(iii)

Lead-based paint.

(3)

Rehabilitation standards.

(i) For rental Housing, if the remaining useful life of one or more major systems is less than the 10-year period of affordability, the Recipient must ensure that, at Project Completion, the developer or Project sponsor establishes a replacement reserve and that monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. Major systems include: Structural support; roofing; cladding and weatherproofing (

e.g.,

(ii) For Homeownership Single-family housing, the Recipient must ensure that, at Project Completion, the Housing is decent, safe, sanitary, and in good repair. The Recipient must ensure that timely corrective and remedial actions are taken by the Project owner to address identified life threatening deficiencies.

(4)

Manufactured housing.

Subpart FTracking Funds; Uniform Administrative Requirements; Nature of Funds

§ 1807.600

Tracking funds.

The Recipient shall develop and maintain an internal tracking and reporting system that ensures that the CMF Award is used in accordance with this part and the Assistance Agreement.

§ 1807.601

Uniform Administrative Requirements.

The Uniform Administrative Requirements apply to all CMF Awards.

§ 1807.602

Nature of funds.

CMF Awards are Federal financial assistance with regard to the application of Federal civil rights laws. CMF Award funds retain their Federal character until the end of the Investment Period.

Subpart GNotice of Funds Availability; Applications

§ 1807.700

Notice of funds availability.

Each Applicant must submit a CMF Award application in accordance with the applicable Notice of Funds Availability (NOFA) published in the

Federal Register.

Subpart HEvaluation and Selection of Applications

§ 1807.800

Evaluation and selectiongeneral.

Each Applicant will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive a CMF Award based on a review process that will include a paper or electronic application, and may include an interview(s) and/or site visit(s), and that is intended to:

(a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;

(b) Ensure that each Recipient can successfully meet its leveraging goals and achieve Affordable Housing Activity and Economic Development Activity impacts;

(c) Ensure that Recipients represent a geographically diverse group of Applicants serving Metropolitan Areas and Underserved Rural Areas across the United States that meet criteria of economic distress, which may include:

(1) The percentage of Low-Income Families or the extent of poverty;

(2) The rate of unemployment or underemployment;

(3) The extent of disinvestment;

(4) Economic Development Activities that target Extremely Low-Income, Very Low-Income, and Low-Income Families within the Recipient's Service Area; and

(5) Any other criteria the CDFI Fund shall set forth in the applicable NOFA; and

(d) Take into consideration other factors as set forth in the applicable NOFA.

§ 1807.801

Evaluation of applications.

(a)

Eligibility and completeness.

(b)

Substantive review.

(1) The Applicant's ability to use a CMF Award to generate additional investments, including private sources of funding;

(2) The need for affordable housing in the Applicant's Service Area;

(3) The ability of the Applicant to obligate amounts and undertake activities in a timely manner; and

(4) In the case of an Applicant that has previously received assistance under any CDFI Fund program, the Applicant's level of success in meeting its performance goals, reporting requirements, and other requirements contained in the previously negotiated and executed assistance, allocation or award agreement(s) with the CDFI Fund, any undisbursed balance of assistance, and compliance with applicable Federal laws.

(c) The CDFI Fund may consider any other factors that it deems appropriate in reviewing an application, as set forth in the applicable NOFA, the application and related guidance materials.

(d)

Consultation with appropriate regulatory agencies.

(e)

Recipient selection.

Subpart ITerms and Conditions of CMF Award

§ 1807.900

Assistance agreement.

(a) Each Applicant that is selected to receive a CMF Award must enter into an Assistance Agreement with the CDFI Fund. The Assistance Agreement will set forth certain required terms and conditions for the CMF Award that may include, but are not limited to, the following:

(1) The amount of the CMF Award;

(2) The approved uses of the CMF Award;

(3) The approved Service Area;

(4) The time period by which the CMF Award proceeds must be Committed;

(5) The required documentation to evidence Project Completion; and

(6) Performance goals that have been established by the CDFI Fund pursuant to this part, the NOFA, and the Recipient's application.

(b) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act or these regulations, or noncompliance with the terms and conditions of the Assistance Agreement, on the part of the Recipient, the CDFI Fund, in its discretion, may make a determination to:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Revoke approval of the Recipient's application;

(3) Reduce or terminate the CMF Award;

(4) Require repayment of any CMF Award that have been paid to the Recipient;

(5) Bar the Recipient from applying for any assistance from the CDFI Fund; or

(6) Take such other actions as the CDFI Fund deems appropriate or as set forth in the Assistance Agreement.

(c) Prior to making a determination that the Recipient has failed to comply substantially with the Act or these regulations or an Assistance Agreement, the CDFI Fund shall provide the Recipient with reasonable notice and opportunity for hearing.

§ 1807.901

Payment of funds.

CMF Awards provided pursuant to this part may be provided in a lump sum payment or in some other manner, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any Payment under this part until a Recipient has satisfied all conditions set forth in the applicable NOFA and Assistance Agreement.

§ 1807.902

Data collection and reporting.

(a)

Data; General.

(1) Disclose the manner in which the CMF Award is used, including providing documentation to demonstrate Project Completion;

(2) Demonstrate compliance with the requirements of this part and the Assistance Agreement; and

(3) Evaluate the impact of the CMF Award.

(b)

Customer profiles.

(c)

Access to records.

(d)

Retention of records.

(e)

Data collection and reporting

Financial reporting,

(ii) For-profit Recipients (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants by a time set forth in the applicable NOFA or Assistance Agreement.

(iii) Insured CDFIs are not required to submit financial statements to the CDFI Fund. The CDFI Fund will obtain the necessary information from publicly available sources. State-Insured Credit Unions must submit to the CDFI Fund copies of the financial statements that they submit to the Appropriate State Agency.

(2)

Annual report.

(ii) The CDFI Fund will use the annual report to collect data to assess the Recipient's compliance with its performance goals and the impact of the CMF and the CDFI industry.

(iii) The Recipient is responsible for the timely and complete submission of the annual report, even if all or a portion of the documents actually are completed by another entity. If such other entities are required to provide information for the annual report, or such other documentation that the CDFI

Fund might require, the Recipient is responsible for ensuring that the information is submitted timely and complete. The CDFI Fund reserves the right to contact such other entities and require that additional information and documentation be provided.

(iv) The CDFI Fund's review of the compliance of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union with the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(f)

Public access.

§ 1807.903

Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Recipient shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, Uniform Administrative Requirements, and Executive Orders. Furthermore, Recipients must comply with the CDFI Fund's environmental quality regulations (12 CFR part 1815) as well as all other Federal environmental requirements applicable to Federal awards.

§ 1807.904

Lobbying restrictions.

No CMF Award may be expended by a Recipient to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1807.905

Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are

applicable to all Recipients and insiders.

§ 1807.906

CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control a Recipient by reason of any CMF Award provided under the Act for the purpose of any applicable law.

§ 1807.907

Limitation on liability.

The liability of the CDFI Fund and the United States Government arising out of any CMF Award shall be limited to the amount of the CMF Award. The CDFI Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1807.908

Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of a CMF Award should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Pt. 1808

PART 1808COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS BOND GUARANTEE PROGRAM

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Authority:

The Small Business Jobs Act of 2010, Pub. L. 111-240, §§ 1134 and 1703; 12 U.S.C. 4713a.

Source:

78 FR 8310, Feb. 5, 2013, unless otherwise noted.

Subpart AGeneral Provisions

§ 1808.100

Purpose.

The purpose of the Community Development Financial Institutions (CDFI) Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued as part of a Bond Issue for Eligible Community or Economic Development Purposes, as authorized by sections 1134 and 1703 of the Small Business Jobs Act of 2010 (Pub. L. 111-240; 12 U.S.C. 4713a).

§ 1808.101

Summary.

This section provides a summary overview of certain key provisions of the interim rule, the detailed requirements of which are set forth in subsequent subparts.

(a)

Guarantee.

(b)

Bonds.

(c)

Bond Loans to Eligible CDFIs.

(d)

Secondary Loans to Secondary Borrowers.

(1) Not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans; and

(2) Not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

(e)

Terms and conditions.

(1) Each Bond shall be a nonrecourse obligation of the Qualified Issuer, payable solely from amounts available pursuant to the Bond Documents. Each promissory note evidencing a Bond Loan shall be a general recourse obligation of the Eligible CDFI and secured by a first lien on collateral. Each Secondary Loan shall be secured by a first lien on collateral and payable solely from amounts available pursuant to the Secondary Loan documents;

(2) The maturity date of a Bond shall not be later than 30 years after the Bond Issue Date. The maturity date of Bond Loans and Secondary Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond;

(3) The Bonds shall be purchased by the Bond Purchaser on terms and conditions that are satisfactory to the Bond Purchaser, the Guarantor, and the CDFI Fund (under specific requirements set forth in § 1808.302 and the Bond Documents); and

(4) The Guarantor shall guarantee payments on Bonds issued as part of a Bond Issue in such forms and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as set forth in this interim rule in Subpart F. These requirements may be expanded upon through the program's Notice of Guarantee Availability, the Bond Documents, and the Bond Loan documents. The Qualified Issuer shall enter into the

applicable Bond Documents to evidence its acceptance of the terms and conditions of the Guarantee.

§ 1808.102

Definitions.

For purposes of this part, capitalized terms used herein and not defined elsewhere are defined as follows:

(a)

Act

(b)

Affiliate

(1) Ownership, control or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities (as that term is defined in 12 CFR 1805.104(mm)) of any legal entity, directly or indirectly or acting through one or more other persons; or

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any legal entity; or

(3) The power to exercise, directly or indirectly, a controlling influence, as determined by the CDFI Fund, over the management, credit decisions, investment decisions, or policies of any legal entity;

(c)

Agency Administrative Fee

(d)

Agreement to Guarantee

(e)

Appropriate Federal Banking Agency

(f)

Appropriate State Agency

(g)

Bond

(h)

Bond Documents

(i)

Bond Issuance Fees

(j)

Bond Issue

(k)

Bond Issue Date

(l)

Bond Loan

(m)

Bond Loan Payment Default Rate

(n)

Bond Loan Rate

(o)

Bond Loan Requirements

(p)

Bond Proceeds

(q)

Bond Purchaser (or Bondholder)

et seq.

(r)

Bond Rate

(s)

Bond Trust Indenture

(t)

Capital Distribution Plan

(u)

CDFI Bond Guarantee Program (or Program)

(v)

Certified Community Development Financial Institution (or Certified CDFI

(w)

Community Development Financial Institutions Fund (or CDFI Fund

et seq.

(x)

Credit Enhancement

(y)

Department Opinion

(z)

Designated Bonding Authority (or DBA)

(aa)

Eligible Community Development Financial Institution (or Eligible CDFI)

(bb)

Eligible Community or Economic Development Purpose (or Eligible Purpose)

(cc)

Guarantee

(dd)

Guarantee Application

(ee)

Guarantor

(ff)

Investment Area

(gg)

Loan Loss Reserves

(hh)

Low-Income

(ii)

Low-Income Area

(jj)

Master Servicer/Trustee

(kk)

Metropolitan Area

(ll)

Notice of Guarantee Availability (or NOGA)

(mm)

Principal Loss Collateral Provision

(nn)

Program Administrator

(oo)

Qualified Issuer

(pp)

Qualified Issuer Application

(qq)

Qualified Secondary Loan Receivable

(rr)

Refinance (or Refinancing)

(ss)

Relending Fund

(tt)

Risk-Share Pool

(uu)

Secondary Borrower

(vv)

Secondary Capital Distribution Plan

(ww)

Secondary Loan

(xx)

Secondary Loan Requirements

(yy)

Servicer

(zz)

Special Servicer

(aaa)

State

(bbb)

Statement of Proposed Sources and Uses of Funds

(ccc)

Targeted Population

(ddd)

Trust Estate

(eee)

Underserved Rural Area

(fff)

Verifiable Losses of Principal, Interest, and Call Premium

§ 1808.103

Participant not instrumentality.

No participant in the CDFI Bond Guarantee Program shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1808.104

Deviations.

To the extent that such requirements are not specified by statute, the Secretary of the Treasury in consultation with the Office of Management and Budget, may authorize deviations on an individual or general basis from the requirements of this interim rule upon a finding that such deviation is essential to program objectives, and the special circumstances stated in the proposal make such deviation clearly in the best interest of the Federal Government. All proposals must be in writing and supported by a statement of the facts and the grounds forming the basis of the deviation. For deviations of general applicability, after a determination is made by the Secretary of the Treasury based on the deviation proposal, the CDFI Fund must publish notification of granted deviations in the

Federal Register.

§ 1808.105

Relationship to other CDFI Fund programs.

Award funds received under any other CDFI Fund program cannot be used by any participant, including Qualified Issuers, Eligible CDFIs and Secondary Borrowers, to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool.

§ 1808.106

OMB control number.

The collection of information requirements in this part are subject to the review of the Office of

Management and Budget (OMB).

Subpart BEligibility

§ 1808.200

Qualified Issuers.

(a)

Requirements and qualifications.

(1) The applicant must be a Certified CDFI, or an entity designated by a Certified CDFI to issue Bonds on its behalf;

(2) The applicant must have appropriate expertise, capacity, and experience, or otherwise be qualified to issue Bonds for Eligible Purposes;

(3) The applicant must have appropriate expertise, capacity, and experience, or otherwise be qualified to make Bond Loans for Eligible Purposes;

(4) The applicant must have appropriate expertise, capacity, and experience to serve or have identified qualified entities that will serve as its Program Administrator and Servicer; and

(5) The applicant must meet such other criteria as may be required by the CDFI Fund pursuant to this interim rule and the applicable Notice of Guarantee Availability.

(b)

Approval.

(c)

Qualified Issuer responsibilities.

(1) Preparing and submitting the Guarantee Application on behalf of Eligible CDFI applicants that designated it to serve as Qualified Issuer, including providing any additional information needed for review by the CDFI Fund;

(2) During the CDFI Fund's review and evaluation of the Guarantee Application, serving as primary point of contact between the CDFI Fund and the Eligible CDFI applicants that designated the Qualified Issuer to serve on their behalf;

(3) Issuing the Bond for purchase by the Bond Purchaser;

(4) Making Bond Loans to Eligible CDFIs, ensuring that 100 percent of Bond Proceeds are used to make Bond Loans;

(5) Charging interest on the Bond Loans as set forth in this interim rule and Bond Loan documents, and providing for such a schedule of repayment of Bond Loans as will, upon the timely repayment of the Bond Loans, provide adequate and timely funds for the payment of principal and interest on the Bonds;

(6) During the duration of the Bonds and the Bond Loans, serving as primary point of contact between the CDFI Fund and Eligible CDFIs;

(7) Overseeing the work of, or serving in the capacity of, the Program Administrator and Servicer;

(8) Enforcing the terms and requirements of the Bond Trust Indenture including, but not limited to: ensuring the repayment of Bond Loans in a timely manner pursuant to the terms of Bond Loan documents; assigning delinquent Bond Loans to the Guarantor upon demand by the CDFI Fund or the Guarantor; and ensuring that the Master Servicer/Trustee establishes and maintains the Risk-Share Pool throughout the term of the Guarantee;

(9) Reviewing collateral and Credit Enhancement requirements for each Bond Loan and providing information on such collateral and Credit Enhancement, as requested, to the CDFI Fund;

(10) Making payment of the Agency Administrative Fee to the CDFI Fund;

(11) Submitting all required reports and additional documentation (including reconciling financial data and Capital Distribution Plan updates, as necessary); and

(12) Such other duties and responsibilities as the CDFI Fund, the Guarantor, or the Bondholder may require.

(d)

Bond Issuance Fees.

(e)

Restriction.

§ 1808.201

Designated Bonding Authority.

(a)

General.

(b)

Selection.

§ 1808.202

Eligible CDFIs.

Each Eligible CDFI applicant seeking a Bond Loan must meet the following criteria:

(a) Be certified by the CDFI Fund as meeting the eligibility requirements set forth in 12 CFR 1805.201;

(b) Have the appropriate expertise, capacity, and experience, or otherwise be qualified to use the proceeds of Bond Loans for Eligible Purposes; and

(c) Meet such other criteria and requirements set forth in the applicable Notice of Guarantee Availability, the Guarantee Application, the Bond Loan Requirements, related Bond and Bond Loan documents, and such other requirements of the CDFI Fund.

Subpart CInterest Rates; Terms and Conditions of Bonds, Bond Loans, and Secondary Loans

§ 1808.300

Interest rates.

(a)

Interest rates.

(2) Interest on each advance of funds under a Bond shall be computed as provided in the Bond.

(3) A principal and interest payment schedule will be determined and provided to the Qualified Issuer for each advance of funds under a Bond, based on the Bond Rate established for the respective advance. The final principal and interest payment schedule for amounts due under a Bond will be the aggregation of the individual principal and interest payment schedules for all

advances of funds under the Bond.

(4) The Bond Loan Rate shall be the same as the Bond Rate on the particular advance of funds under the Bond that funds the Bond Loan.

(5) The rate of interest for each Secondary Loan shall be established by the Eligible CDFI in accordance with subsection 1808.307(c), and may be subject to limitations specified in the applicable NOGA.

(b)

Bond Loan payment default interest rate.

§ 1808.301

Eligible uses of Bond Proceeds.

Bond Proceeds must be used by a Qualified Issuer to finance Bond Loans or Refinance loans to Eligible CDFIs for Eligible Purposes as defined in section 1808.102 of this interim rule. A Qualified Issuer that is also a Certified CDFI may not finance a Bond Loan to itself or refinance its own loan. One hundred percent of the principal amount of each Bond must be used to make Bond Loans. As a Bond Loan is repaid, such repaid Bond Loan proceeds in excess of those required for debt service payments on the Bond must be used to repay the Bond or held in the Relending Account and used for additional Secondary Loans, to the extent authorized under § 1808.308.

§ 1808.302

Bond terms and conditions.

(a)

Maturity date.

(b)

Nonrecourse obligation.

(c)

Terms.

(d)

No subordination.

(e)

Other limitations.

(f)

Terms for Bond issuance and disbursement of Bond Proceeds.

(2) Disbursements of Bond Proceeds to the Qualified Issuer shall be made pursuant to an advance request process established by the Bond Purchaser and the CDFI Fund under which the Qualified Issuer shall request an advance of funds under a Bond.

(g)

Amortization of Bond.

(h)

Optional prepayment of Bonds.

(i)

Mandatory prepayment of Bonds.

(i) On the Calculation Date (as defined in subsection 1808.308(e)) of each year, any amount retained in the Relending Subaccount that exceeds the Relending Subaccount Maximum (as defined in subsection 1808.308(d)) by $100,000 or more shall be applied to prepay Bonds on the next succeeding payment date.

(ii) Any amounts derived from the liquidation of collateral from the Bond Loan and/or Secondary Loan in connection with the exercise by the Guarantor, the Qualified Issuer or the Bondholder of remedies upon default of the Bond Loan shall be applied, immediately upon liquidation, in the following order (inclusive of reasonable fees and expenses associated therewith):

(A) To the repayment of any amounts drawn under the Guarantee;

(B) To the prepayment of Bonds, in a like amount;

(C) To the replenishment of any funds drawn from the Risk-Share Pool Fund; and

(D) To the Eligible CDFI for application in accordance with the Secondary Loan documents.

(2) When an amount is required to be applied as a mandatory prepayment of

§ 1808.303

Risk-Share Pool.

The Master Servicer/Trustee, on behalf of the Qualified Issuer and for the benefit of the Bondholder, shall establish a Risk-Share Pool that is funded at each disbursement of the Bond Loan proceeds by payment from each Eligible CDFI in accordance with 12 U.S.C. 4713a(d). The Risk-Share Pool must remain in place throughout the term of the Guarantee. Amounts in the Risk Share Pool Fund will not be returned to Eligible CDFIs until maturity of all of the Bonds, and termination of all of the Bond Loans, within a Bond Issue.

(a) At each disbursement of the Bond Loan proceeds, each Eligible CDFI shall deposit an amount that is equal to three percent of the disbursement, for a total of three percent of the guaranteed amount outstanding of the Bond, from monies other than Bond Loan proceeds, into the applicable subaccount of the Risk-Share Pool Fund. Such monies shall remain in said account throughout the term of the Bond.

(b) Any interest on a Bond Loan in excess of the Bond Loan Rate derived by the Qualified Issuer during any period during which the Bond Loan Payment Default Rate applies shall also be deposited in the Risk-Share Pool Fund.

(c) The Risk-Share Pool Fund shall be applied by the Master Servicer/Trustee to payments of debt service on the Bond Issue in the event that the Eligible CDFI defaults in the corresponding payment of debt service on the Bond Loan. The defaulted Eligible CDFI's deposit shall be applied first to any such payment of debt service. After depletion of the defaulted Eligible CDFI's deposit, each remaining Eligible CDFI's deposit shall be applied prorata to any such payment of debt service. Monies on deposit in the Risk-Share Pool Fund shall be applied to such payments and shall be depleted in full prior to any draw on the Guarantee.

(d) Eligible CDFIs (excluding the Eligible CDFI in default and responsible for a draw) shall not be required to replenish the Risk-Share Pool Fund in the event of a draw.

(e) The Risk Share Pool deposit shall be sufficient collateral to secure any draw on Bond Loan proceeds related to the costs of issuance pursuant to 1808.304(b).

(f) In the event of a payment default on the Bond Loan by an Eligible CDFI, the Qualified Issuer shall notify the CDFI Fund and request permission to draw from the Risk-Share Pool to cover any default of principal and interest payments due to the Bond Purchaser.

(g) Amounts in the Risk Share Pool Fund will not be returned to Eligible CDFIs until maturity of all of the Bonds, and termination of all of the Bond Loans, within a Bond Issue. Upon maturity of all of the Bonds, and termination of the Bond Loans, within a Bond Issue, the pro rata amount of each Eligible CDFI's payments in the Risk-Share Pool shall be returned to each Eligible CDFI; provided however, that such Eligible CDFI has properly replenished any draws on the Risk-Share Pool attributed to nonpayment of its Bond Loan and the corresponding Bond.

§ 1808.304

Eligible uses of Bond Loan proceeds.

(a)

Eligible uses.

(b)

Bond Issuance Fees.

(i) To pay reasonable transaction fees and expenses of the Qualified Issuer, its

(ii) To pay reasonable transaction fees and expenses of the Master Servicer/Trustee, its advisors and consultants, related to the Bond issuance; and

(iii) To pay reasonable transaction fees and expenses of the Eligible CDFI, its advisors and consultants, related to the making of the Bond Loan.

(2) Any fees and expenses arising out of each transaction which, in the aggregate, exceed the one percent limit on Bond Issuance Fees payable from Bond Loan proceeds must be paid by the Eligible CDFI from monies other than Bond Loan proceeds.

(c)

Prefunding of Bond Loan payments.

§ 1808.305

Bond Loan terms and conditions.

(a)

Maturity date.

(b)

Bond Loan general recourse obligation; Collateral.

(2) The Bond Loan shall be further secured by a first lien of the Master Servicer/Trustee, on behalf of the Bondholder, on:

(i) The Trust Estate;

(ii) Qualified Secondary Loan Receivables; and

(iii) Either:

(A) An assignment of the Secondary Loan collateral (other than a Principal Loss Collateral Provision) from the Eligible CDFI to the Master Servicer/Trustee; or

(B) Provision of a Principal Loss Collateral Provision for the benefit of the Master Servicer/Trustee, in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(3) The CDFI Fund may, in its sole discretion, approve alternative forms of Bond Loan collateral.

(4) A parity first lien on pledged collateral may be accepted, in the sole discretion of the CDFI Fund.

(5) If any collateral becomes non-performing during the term of the Bond Loan, the Guarantor may require the applicable Eligible CDFI to substitute other collateral that is of equal quality to the initial collateral, when performing, acceptable to the Guarantor in its sole discretion.

(6) An Eligible CDFI's parent organization, Affiliate, or an entity that is related to the Eligible CDFI through its management structure, may assume limited recourse obligation for the Bond Loan if it provides Credit Enhancement and/or pledges financial resources or such other financial support or risk mitigation that would enhance the Eligible CDFI's creditworthiness and its ability to repay the

Bond Loan, thereby decreasing the risk underlying the Guarantee.

(c)

Disbursement of Bond Loan proceeds.

(2) Each requisition shall be accompanied by invoices and certifications by the Eligible CDFI (and the Secondary Borrower, if applicable) as to expenditure of proceeds for Eligible Purposes.

(3) No Bond Loan proceeds may be disbursed later than 60 months after the Bond Issue Date. Any Bond Loan proceeds not disbursed will have been forfeited by the Eligible CDFI.

(4) Disbursements to capitalize the Eligible CDFI's Loan Loss Reserves shall be made pursuant to a requisition process established by the Qualified Issuer and the CDFI Fund.

(d)

Amortization of Bond Loan.

(e)

Optional prepayment of Bond Loan.

(f)

Mandatory prepayment of Bond Loan.

§ 1808.306

Conditions precedent to Bond and Bond Loan.

The ability of the Qualified Issuer to issue a Bond and make a Bond Loan shall be subject to the satisfaction of the following conditions precedent:

(a) Evidence satisfactory to the Qualified Issuer that the Eligible CDFI will comply with the terms and conditions of the Bond Loan documents, including repayment of the Bond Loan;

(b) Evidence satisfactory to the Qualified Issuer, the Guarantor, and the CDFI Fund that the Eligible CDFI has the authority to enter into the Bond Loan, has secured the Credit Enhancement, if any, demonstrated a reasonable prospect of repayment of the Bond Loan, and pledged the collateral (including executed security documents, UCC-1 financing statements or mortgages, as applicable);

(c) A Guarantee Application that has been approved by the Guarantor;

(d) A satisfactory credit review by the CDFI Fund and in compliance with the Bond Loan Requirements, including submission of complete and accurate Guarantee Application materials, submitted in a timely manner, demonstrating the Eligible CDFI's ability to repay the Bond Loan;

(e) Opinions of legal counsel to the Qualified Issuer and the Eligible CDFI;

(f) Executed Bond Loan documents;

(g) Organizational documents of the Eligible CDFI;

(h) Certifications by the Qualified Issuer and Eligible CDFIs that Bond Proceeds and Bond Loan proceeds will not be used for lobbying by recipients of Federal loans or guarantees;

(i) A statement that no default, event of default, or due and unsatisfied liability has occurred and is continuing with respect to any obligations of the Qualified Issuer and each Eligible CDFI to the CDFI Fund, the Guarantor, the Bond Purchaser, the U.S. Internal Revenue Service, or any other agency, authority or instrumentality of the Federal Government; and

(j) Any other conditions precedent set forth in the Bond Loan documents, including documentation that any credit enhancements have been secured by the Eligible CDFI.

§ 1808.307

Secondary Loan Eligible Purposes; Terms and conditions.

(a)

Eligible Purposes.

(b)

Making Secondary Loans.

(i) Not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of the Eligible CDFIs' Bond Loan proceeds allocated for Secondary Loans; and

(ii) Not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of the Eligible CDFIs' Bond Loan proceeds allocated for Secondary Loans

(2) In the event that the Eligible CDFI does not comply with the foregoing requirements of paragraphs (b)(1)(i) and (ii) of this section, the available Bond Loan proceeds at the end of the

applicable period shall be reduced by an amount equal to the difference between the amount required by paragraphs (b)(1)(i) and (ii) minus the amount previously committed to the Secondary Loans in the applicable period. Consistent with the corresponding Bond Loan, the Secondary Loans shall be drawn down by the Secondary Borrowers upon demonstration of an Eligible Purpose.

(c)

Secondary Loan interest rate.

(1) With respect to each Secondary Loan, the Eligible CDFI will be required to propose to the CDFI Fund:

(i) A minimum and maximum spread over the corresponding Bond Loan Rate which will represent the standard minimum and maximum interest rate (Minimum Secondary Loan Rate and Maximum Secondary Loan Rate, respectively); and

(ii) A maximum spread over the Maximum Secondary Loan Rate in event of a Secondary Loan default (Maximum Secondary Loan Default Spread).

(2) The CDFI Fund reserves the right to evaluate, approve, modify, or disapprove the proposed Minimum Secondary Loan Rate, Maximum Secondary Loan Rate, and Maximum Secondary Loan Default Spread before approving any Guarantee Application.

(d)

Secondary Loan default rate.

(e)

Secondary Loan maturity.

(f)

Secondary Loan collateral.

(i) A first lien of the Eligible CDFI on pledged collateral in an amount that is consistent with the loan-to-value ratio requirements set forth in the Secondary Loan Requirements; or

(ii) A Principal Loss Collateral Provision for the benefit of the Master Servicer/Trustee, in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(2) Qualified Secondary Loan Receivables may be used as collateral; provided however, that such collateral is secured by a first lien on the Secondary Loan collateral in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(3) A parity first lien on pledged collateral may be accepted, in the sole discretion of the CDFI Fund.

(g)

Commitments for Secondary Loans.

(h)

Disbursement of Secondary Loan proceeds.

(2) Each requisition shall be accompanied by invoices and certifications by the Secondary Borrower as to expenditure of proceeds for Eligible Purposes. The Eligible CDFI must also attest that the Secondary Loan conforms to the requirements set forth in the applicable Secondary Loan Requirements. In the case of Refinancings, the Eligible CDFI must also attest that the

(3) Secondary Loan proceeds shall be disbursed in accordance with the applicable Secondary Loan Requirements which shall set forth, among other requirements, that Secondary Loan disbursements shall be made in accordance with commercially reasonable standards and timeframes for disbursement based on the nature of the Eligible Purposes. The Secondary Loan Requirements shall also specify what constitutes a commercially reasonable timeframe for disbursement in connection with specific types of Eligible Purposes. Notwithstanding the foregoing, each Eligible CDFI shall propose a timeframe for disbursement in connection with each Secondary Loan, which timeframe shall be subject to the requirements set forth in the Secondary Loan Requirements.

(i)

Amortization of Secondary Loans.

(j)

Prepayment of Secondary Loans.

(k)

Repayment of Secondary Loans.

§ 1808.308

Relending Fund; Relending Account.

(a)

General.

(b)

Application of funds to Secondary Loans.

(c)

Requirements of Secondary Loans from Relending Account.

(1) The Qualified Issuer has received and approved a Bond Loan commitment request submitted by the Eligible CDFI;

(2) No material event has occurred and is continuing or is threatened at the Eligible CDFI level or Qualified Issuer level that adversely affects the Eligible CDFI, the Bond or the Bond Loan;

(3) No Eligible CDFI event of default has occurred and is continuing with respect to the Bond Loan;

(4) No Qualified Issuer event of default has occurred and is continuing with respect to the Bond;

(5) There exists no unreplenished draw on the Risk-Share Pool Fund by the Eligible CDFI;

(6) The maturity of Secondary Loans made from the Relending Fund shall not extend beyond the maturity date of the corresponding Bond; and

(7) Any other conditions set forth in this interim rule, the applicable Notice of Guarantee Availability, the Secondary Loan Requirements or the Bond Loan documents.

(d)

Relending Subaccounts.

(e)

Notification Date.

(1) The date on which the balance in such Relending Subaccount becomes less than or equal to the applicable Relending Subaccount Maximum, or

(2) Six months following the Notification Date.

(f)

Mandatory redemption.

§ 1808.309

Restrictions on uses of Bond Proceeds and Bond Loan proceeds.

Pursuant to 12 U.S.C. 47123a(c)(5), Bond Loan proceeds shall not be used for:

(a) Political activities;

(b) Lobbying, whether directly or through other parties;

(c) Outreach;

(d) Counseling services;

(e) Travel expenses;

(f) For the salaries or administrative costs of the Qualified Issuer or any recipients of Bond Proceeds, other than those costs covered by Bond Issuance Fees;

(g) To fund the Risk-Share Pool;

(h) To pay fees other than Bond Issuance Fees; or

(i) Any other use as may be specified in the applicable Notice of Guarantee Availability.

Subpart DApplications for Guarantee and Qualified Issuer

§ 1808.400

Notice of Guarantee Availability.

Interested parties will be invited to submit Qualified Issuer Applications and Guarantee Applications in accordance with this interim rule and the applicable Notice of Guarantee Availability. The NOGA will set forth application and eligibility requirements for an entity that wishes to be designated as a Qualified Issuer (including, in the CDFI Fund's sole discretion, the Designated Bonding Authority) and a Qualified Issuer that wishes to be approved to receive a Guarantee. The NOGA may also contain eligibility requirements, application procedures, and additional terms and conditions for entities wishing to serve as Servicers, Program Administrators, and other roles as may be determined by the CDFI Fund. The NOGA will advise interested parties on how to apply and will

establish criteria, deadlines, and other Qualified Issuer and Guarantee Application requirements, including specifying any additional terms and conditions, limitations, special rules, procedures, and restrictions for a given application period.

§ 1808.401

Application requirements.

(a)

Qualified Issuer Application.

(b)

Guarantee Application.

(2) The Capital Distribution Plan shall include, but not be limited to, the following information:

(i) Statement of Proposed Sources and Uses of Funds;

(ii) For the Qualified Issuer and each Certified CDFI seeking a Bond Loan, an organizational capacity statement, a plan that describes how the proposed Bond Loan will meet Eligible Purposes, and a description of Credit Enhancement, if any;

(iii) A Secondary Capital Distribution Plan, if applicable; and

(iv) Assurances and certifications that not less than 100 percent of the principal amount of Bonds will be used to make Bond Loans for Eligible Purposes beginning on the Bond Issue Date, and that Secondary Loans shall be made as set forth in subsection 1808.307(b).

Subpart EEvaluation and Selection

§ 1808.500

Evaluation of Qualified Issuer Applications.

(a)

General.

(b)

Eligibility and completeness.

(c)

Substantive review.

(1) The extent to which the Qualified Issuer Application demonstrates that the applicant possesses the appropriate expertise, capacity and experience, or other qualifications to manage the Bond Issue on the terms and conditions

(2) The expertise and experience of its Program Administrator and Servicers;

(3) The Qualified Issuer applicant's demonstrated performance of financially sound business practices relative to the industry norm for bond issuers, as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, and/or auditors;

(4) Information that demonstrates the applicant, its Program Administrator and Servicers have the appropriate expertise, capacity, and experience or otherwise be qualified to originate, underwrite, service and monitor loan portfolios that serve Eligible Purposes and are targeted toward Low-Income and Underserved Rural Areas; and

(5) Such other criteria that the CDFI Fund deems appropriate for purposes of evaluating the merits of a Qualified Issuer Application.

§ 1808.501

Evaluation of Guarantee Applications.

(a)

General.

(1) Demonstrate that the Qualified Issuer and the proposed Eligible CDFIs have a feasible plan to successfully repay the Bond (including principal, interest, and call premium) and Bond Loans according to their respective terms, to the satisfaction of the CDFI Fund; and

(2) Meet any other requirements deemed appropriate by the CDFI Fund and the Guarantor.

(b)

Eligibility and completeness.

(c)

Substantive review.

(1) The extent to which the Guarantee Application proposes strategies that demonstrate the Qualified Issuer's ability to implement the Capital Distribution Plan;

(2) The adequacy of proposed risk mitigation provisions designed to protect the financial interests of the Federal Government based on information that includes, but is not limited to: the amount and quality of any Credit Enhancements; the amount and quality of any other financial resources to be pledged or risk mitigation to be provided by an Affiliate to the Eligible CDFI through its management structure, that will assume limited obligation for the Bond Loan and enhance the Eligible CDFI's creditworthiness and its ability to repay the Bond Loan; and the provision for an orderly retirement of principal;

(3) The extent to which the Guarantee Application demonstrates that the Qualified Issuer possesses the appropriate expertise, capacity and experience, or other qualifications to manage the Bond Issue on the terms and conditions set forth in this interim rule and the applicable NOGA;

(4) The Qualified Issuer's demonstrated performance of financially sound business practices relative to the industry norm for bond issuers, as evidenced by financial audits and reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, independent regulators, or auditors;

(5) Information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience or is otherwise qualified to make, service and monitor Bond Loans;

(6) The extent to which the proposed Bond Loans are likely to serve Low-Income Areas or Underserved Rural Areas; and

(7) Such other criteria that the CDFI Fund and the Guarantor deem appropriate for purposes of evaluating the merits of a Guarantee Application.

§ 1808.502

Evaluation of Designated Bonding Authority Applications.

In addition to the evaluation criteria for Qualified Issuers set forth above, DBA applicants must demonstrate the existence of resources to perform functions of the DBA as set forth in section 1808.201 and meet any other criteria set forth in the applicable NOGA and that may be required by

the CDFI Fund.

§ 1808.503

Consultation with Appropriate Regulatory Agencies.

In the case of any CDFI Bond Guarantee Program applicant that is a Federally regulated financial institution (or an Affiliate thereof), the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to designating the applicant as a Qualified Issuer, Servicer, Master Servicer/Trustee, Program Administrator or other role, making a final Guarantee commitment, issuing a Guarantee, and/or entering into an Agreement to Guarantee. The CDFI Fund also reserves the right, in its sole discretion, to consult with the Appropriate Federal Banking Agency and Appropriate State Agency with respect to any Eligible CDFI that is proposed to receive a Bond Loan or any Secondary Borrower that is proposed to receive a Secondary Loan.

§ 1808.504

Selection of Qualified Issuers; Approval for Guarantee.

(a)

General.

(b) The Guarantor will determine whether a Qualified Issuer will be authorized to issue Bonds and receive a Guarantee based on the foregoing evaluation criteria and processes, and any other requirements or processes set forth in the applicable NOGA.

(1) Not later than 30 days after receipt of a complete Guarantee Application (or 30 days after designation as a Qualified Issuer, if submitting simultaneous applications) by a Qualified Issuer, the CDFI Fund shall provide an internal Department Opinion regarding compliance by the Qualified Issuer with the requirements of the CDFI Bond Guarantee Program.

(2) The Guarantor shall approve or deny a Guarantee Application no later than 90 days after receipt of a complete Guarantee Application, and all other required information by the CDFI Fund or the Guarantor with respect to a request for such Guarantee.

(c) The Guarantor may limit the number of Guarantees made per year or Guarantee Applications

accepted to ensure that a sufficient examination of Guarantee Applications is conducted.

(d) The CDFI Fund shall notify the Qualified Issuer in writing of the Guarantor's approval or disapproval of a Guarantee Application.

(e) The Guarantor reserves the sole discretion to approve a Guarantee Application for a Guarantee amount that is less than that which is requested.

(f) In the event that there are material changes after submission of a Guarantee Application (including, but not limited to, a revision of the Capital Distribution Plan or a change in the Certified CDFIs that are proposed for receiving Bond Loans) prior to or after the designation as a Qualified Issuer or approval of a Guarantee Application or Guarantee, the Qualified Issuer or Guarantee applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The Guarantor will evaluate such material changes, along with the Guarantee Application, to approve or deny the Guarantee Application and/or determine whether to modify the terms and conditions of the Guarantee.

Subpart FTerms and Conditions of Guarantee

§ 1808.600

Full faith and credit and incontestability of Guarantee.

The full faith and credit of the Federal Government is pledged to the payment of all Bonds issued as part of a Bond Issue with respect to Verifiable Losses of Principal, Interest, and Call Premium. An executed Guarantee shall

§ 1808.601

Assignment and transfer of Guarantee.

The Guarantee shall be fully assignable and transferrable to the capital markets, on terms and conditions that are consistent with comparable bonds guaranteed by the Federal Government and satisfactory to the Guarantor and the CDFI Fund.

§ 1808.602

Offer of Guarantee.

Upon approval of the Guarantee Application, the Qualified Issuer will receive from the Guarantor an offer of Guarantee that will set forth certain required terms and conditions to be fulfilled prior to issuance of the Guarantee.

§ 1808.603

Issuance of Guarantee.

(a)

Conditions precedent.

(1) The conditions precedent to the Bond Issue and the making of the Bond Loan have been satisfied, including a credit review that indicates a reasonable prospect of repayment as demonstrated by the CDFI Fund's analysis of the cash flow and collateral provisions of the Eligible CDFI;

(2) The Qualified Issuer shall have submitted to the CDFI Fund a complete Guarantee Application, containing all required information relating to the Bond and the Bond Loan, as required by the Guarantor;

(3) There have been no material changes to the Bond and Bond Loan documents from the forms thereof approved by the Guarantor and the CDFI Fund;

(4) The Bond Purchaser and the Qualified Issuer shall have executed a Bond Purchase Agreement; and

(5) Such additional information or documents as may be required by the CDFI Fund, the Guarantor, or the Bond Purchaser.

(b)

Rescission of approval.

(1) The Guarantor or the CDFI Fund determines that the Qualified Issuer cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer of Guarantee, or

(2) The Guarantor or the CDFI Fund determines, in its sole discretion, that the Qualified Issuer no

longer meets applicable CDFI Bond Guarantee Program criteria and requirements.

§ 1808.604

Agreement to Guarantee.

(a)

General.

(b)

Terms and conditions.

(1) The form and amount of Guarantee;

(2) Any prohibited amendments of Bond Documents or limitations on transfer of the Guarantee;

(3) Terms and conditions of the Risk-Share Pool and any Credit Enhancement that may be required by the CDFI Fund and the Guarantor;

(4) Provisions regarding the Agency Administrative Fee;

(5) Representations and warranties of the Qualified Issuer;

(6) Pledged security;

(7) Financial covenants;

(8) Events of default and remedies;

(9) Assignment of Bond Loans to the Guarantor;

(10) Guarantor payment does not discharge Qualified Issuer; subrogation;

(11) Undertakings for the benefit of the Bondholder including: notices, registration, prohibited amendments, prohibited transfers, and indemnification;

(12) Governing law;

(13) Terms and conditions of Bond Loans;

(14) Prohibition against subordination; and

(15) Such other matters as the Guarantor or the CDFI Fund may deem necessary or appropriate.

(c)

Access to funds.

§ 1808.605

Agency Administrative Fee.

The Qualified Issuer shall pay the CDFI Fund annually a fee equal to 10 basis points (0.1 percent) of the amount of the unpaid principal of the Bond(s). The initial Agency Administrative Fee must be paid in full as a condition to closing any Agreement to Guarantee, no later than the effective date of the Agreement to Guarantee.

§ 1808.606

Program Administrator; Servicer; Master Servicer/Trustee.

(a)

General.

(b)

Program Administrator

Duties.

(i) Approving and qualifying Eligible CDFI applications for participation in the Guarantee Application;

(ii) Bond and Bond Loan packaging;

(iii) Reviewing and approving Secondary Loan commitments from Eligible CDFIs for funds from the Bondholder or the Relending Account based on the Secondary Loan Requirements;

(iv) Compliance monitoring of Bond Loans and Secondary Loans;

(v) Preparing and submitting reports required by this interim rule; and

(vi) All other duties and related services that are customarily expected of a Program Administrator, and as may be required by the CDFI Fund or the Guarantor.

(2)

Selection.

(3)

Fees and expenses.

(c)

Servicer

Duties.

(i) Billing and collecting Bond Loan payments from Eligible CDFIs;

(ii) Initiating collection activities on past-due Bond Loans;

(iii) Transferring Bond Loan payments to the respective funds and accounts managed by the Master Servicer/Trustee;

(iv) Bond Loan administration and servicing;

(v) Systematic and timely reporting of Bond Loan performance through remittance and servicing reports, and providing such reports as may be required by this interim rule;

(vi) Proper measurement of annual outstanding Bond Loan requirements; and

(vii) All other duties and related services that are customarily expected of Servicers, and as may be required by the CDFI Fund or the Guarantor.

(2)

Selection.

(3)

Fees and expenses.

(d)

Special Servicer

Duties.

(i) Negotiating the restructuring of Bond Loans that are in or about to enter into an event of Default;

(ii) Initiating foreclosure action and appointing a receiver; and

(iii) Enforcing deficiency judgments.

(2)

Evaluation.

(i) Restructuring, recovery, and foreclosure of loans that are similar to Bond Loans;

(ii) Financial strength and capacity;

(iii) Managing regional or national intake, processing, or servicing operational systems and infrastructure of loans that are similar to Bond Loans;

(iv) Managing regional or national originator communication systems and infrastructure;

(v) Developing and implementing training and other risk management strategies on a regional or national basis;

(vi) Compliance monitoring and reporting; and

(vii) Such other criteria that may be required by the CDFI Fund.

(3)

Fees and expenses.

(e)

Master Servicer/Trustee

Duties.

(i) The fiduciary power to enforce the terms of Bonds and the Bond Loans pursuant to the Bond Trust Indenture;

(ii) Establishing and managing the funds and accounts set forth in this interim rule;

(iii) Providing such reports as required;

(iv) Overseeing the activities of Servicers and managing loan administration;

(v) Servicing and monitoring of Bond Issues with respect to repayment obligations to the Bondholder and the terms of the Agreement to Guarantee;

(vi) Tracking the movement of funds between the accounts of the Master Servicer/Trustee and all Servicers;

(vii) Ensuring orderly receipt of the monthly remittance and servicing reports of the Servicers;

(viii) Monitoring collection and foreclosure actions;

(ix) Aggregating the reporting and distribution of funds to the Qualified Issuer, CDFI Fund, and the Bondholder, as necessary;

(x) Removing and replacing Servicers, as necessary;

(xi) Performing systematic and timely reporting of Bond Loan performance compiled from Servicers' reports, and providing such reports as required in this interim rule;

(xii) Ensuring proper distribution of funds to Eligible CDFIs, servicing the Bonds, and repayment to the Bondholder; and

(xiii) All other duties and related services that are customarily expected of a Master Servicer/Trustee, and as may be required by the CDFI Fund.

(2)

Selection.

(i) Administration, servicing, and monitoring of loans that are similar to Bond Loans;

(ii) Financial strength and capacity;

(ii) Managing regional or national intake, processing, or servicing operational systems and infrastructure of loans that are similar to Bond Loans;

(iii) Managing regional or national originator communication systems and infrastructure;

(iv) Developing and implementing training and other risk management strategies on a regional or national basis;

(v) Compliance monitoring and reporting; and

(vi) Such other criteria that may be required by the CDFI Fund.

(3)

Fees and expenses.

(f)

Funds and accounts.

(1) The Project Fund, and therein a Project Account for each Bond: All disbursements of Bond Proceeds from the Bondholder pursuant to the requisition processes shall be deposited in the applicable Project Account or Subaccount, and the Master Servicer/Trustee shall disburse advances with respect to the Bond Loan to the Eligible CDFI therefrom;

(2) The Revenue Fund, and therein a Revenue Account for each Bond: All payments of debt service

or prepayments on the Bond Loan pursuant to the Bond Loan documents, other payments by the Eligible CDFI pursuant to the Bond Loan documents, and any investment income derived from the corresponding accounts or subaccounts in the Debt Service Fund shall be deposited in the accounts and subaccounts of the Revenue Fund;

(3) The Debt Service Fund, and therein an Interest Account, a Principal Account and a Redemption Account for each Bond: Not later than 30 days prior to a Bond payment date, the Master Servicer/Trustee shall make the following transfers from the applicable account or subaccount of the Revenue Fund:

(i) All scheduled payments (amortization installments or at maturity) of principal received from the Eligible CDFI on the Bond Loan shall be transferred to the Principal Account or Subaccount;

(ii) All scheduled payments (amortization installments or at maturity) of interest received from the Eligible CDFI on the Bond Loan shall be transferred to the Interest Account or Subaccount; and

(iii) All prepayments of principal, interest and premium, if any, received from the Eligible CDFI on the Bond Loan shall be transferred to the Redemption Account or Subaccount;

(4) The Administrative Fees Fund, and therein an Administrative Fees Account for each Bond: All fees necessary for administering and servicing the Bond or the Bond Loan (including the Agency Administrative Fee and Bond Issuance Fees), payable by the Eligible CDFI pursuant to the Bond Loan documents, shall be deposited in the applicable account or subaccount of the Administrative Fees Fund and, thereafter, shall be disbursed by the Master Servicer/Trustee to the subject recipient in accordance with the terms of each such payment;

(5) The Risk-Share Pool Fund, and therein a Risk-Share Pool Account for each Bond, in accordance with § 1808.303 of this part;

(6) The Relending Fund, and therein a Relending Account for each Bond, in accordance with § 1808.308 of this part; and

(7) Such other funds and accounts as may be required by the CDFI Fund and the Qualified Issuer in connection with a Bond Issue, Bond or Bond Loan.

(g)

Other funds and accounts.

(h)

No commingling of funds.

(i)

Permitted investments.

Editorial Note:

At 78 FR 8310, Feb. 5, 2013, part 1808 was added with two paragraphs (e)(2)(ii) in § 1808.606.

§ 1808.607

Representations and warranties of Qualified Issuer with respect to Guarantee.

The Qualified Issuer shall represent and warrant to the Guarantor, at the execution of any Agreement to Guarantee to which it is a party and thereafter at the closing of any Bond Loan and the issuance of any Bond, the following:

(a) The Qualified Issuer is duly organized, validly existing and in good standing in its State of organization with the power and authority to enter into the agreements and consummate the transactions thereby contemplated;

(b) The information contained in the Qualified Issuer Application is true and correct;

(c) The Bonds, when executed, are and will be duly authorized, executed, valid, binding and enforceable obligations of the Qualified Issuer;

(d) Except as disclosed to the Guarantor, no claim or litigation is pending or threatened which would materially adversely affect the Qualified Issuer's ability to consummate the transactions contemplated by the Agreement to Guarantee, the Bond, or the Bond Loan;

(e) The consummation of the transactions contemplated by the Agreement to Guarantee, the Bond, and the Bond Loan will not conflict with or constitute an event of default under any law or agreement to which the Qualified Issuer is subject;

(f) No authorization, approval or consent of a governmental authority is necessary on the part of the

Qualified Issuer to consummate the transactions contemplated by the Bond or the Bond Loan which has not been obtained;

(g) No funds from any other CDFI Fund program are being used to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool; and

(h) Any other representation or warranty deemed appropriate by the Guarantor, the CDFI Fund or the Bond Purchaser.

§ 1808.608

Representations and warranties of Eligible CDFI with respect to each Bond Loan.

The Eligible CDFI shall represent and warrant to the Qualified Issuer, at the execution of each set of Bond Loan documents and, thereafter, until repayment in full of such Bond Loan, the following:

(a) The performance by the Eligible CDFI under the Bond Loan documents is duly authorized, does not require consent or approval of any governmental authority not already obtained, does not constitute a default of any law or agreement to which the Eligible CDFI is subject, will not result in the imposition of any lien (other than pursuant to the Bond Loan), and constitutes a valid, binding and enforceable obligation of the Eligible CDFI;

(b) The information provided by the Eligible CDFI fairly represents the financial position (in conformity with generally accepted accounting principles), experience and capacity of the Eligible CDFI, and there have been no material adverse changes in the Eligible CDFI's financial condition since the date of such financial information;

(c) No claim or litigation is pending or threatened which would materially adversely affect the Eligible CDFI's ability to consummate the transactions contemplated by the Bond Loan, or repay the Bond Loan;

(d) No event of default or other material event which could become an event

(e) The Eligible CDFI has filed all Federal, State and local tax returns required and paid all liabilities in connection therewith;

(f) The Eligible CDFI has good and marketable title to the collateral;

(g) The Bond Loan will be applied to Eligible Purposes;

(h) The information provided in the Guarantee Application is true and accurate;

(i) No default, event of default or due and unsatisfied liability has occurred and is continuing with respect to any obligations of the Eligible CDFI to the Guarantor, the CDFI Fund, the Bond Purchaser, the U. S. Internal Revenue Service, or any other agency, authority or instrumentality of the Federal Government;

(j) No funds from any other CDFI Fund program are being used to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool; and

(k) Any other representations and warranties set forth in the Bond Loan documents.

§ 1808.609

Representations and warranties of Secondary Borrower.

Each Secondary Borrower shall make identical representations and warranties as the Eligible CDFI and shall make specific representations and warranties with respect to the collateral and the project that is proposed to be financed by the Secondary Loan, upon which the Eligible CDFI, the Qualified Issuer, the Bondholder, the Guarantor, and the CDFI Fund may rely. These representation and warranties shall be to the satisfaction of the Guarantor and the CDFI Fund.

§ 1808.610

Covenants of Qualified Issuer with respect to Guarantee.

The Qualified Issuer shall covenant in the Agreement to Guarantee that it will:

(a) Furnish to the CDFI Fund, at the Qualified Issuer's expense, all annual and periodic financial reporting as described in § 1808.619 of this part;

(b) Maintain books and records related to each Bond Loan, the collateral and the project that is to be financed by Bond Proceeds, and allow inspection thereof;

(c) Preserve its corporate existence and Certified CDFI status, if applicable;

(d) Comply with all laws to which it is subject;

(e) Maintain its solvency;

(f) To the extent it assigns any of its obligations under the agreement to an Affiliate, guarantee performance of such obligations;

(g) Allow audits and investigations by the CDFI Fund, the Treasury Inspector General, the Comptroller General, or such other Federal Government offices as may be designated by the Guarantor or the CDFI Fund;

(h) Provide such reports as required in § 1808.619 of this part;

(i) Make, execute and deliver such instruments as the Guarantor or the CDFI Fund may reasonably request;

(j) Sign and certify as true and correct all Bond Documents and Bond Loan documents;

(k) Not amend or modify any agreement related to the Bond without the consent of the Bondholder, the Guarantor, or the CDFI Fund, as applicable;

(l) Comply with the terms and conditions of the Agreement to Guarantee, the Bond Trust Indenture, and the Bond and Bond Loan documents;

(m) Immediately notify the Guarantor and the CDFI Fund of any material change or event that affects any representation, warranty or covenant of the Guarantee, Bond or Bond Loan documents;

(n) Pay and discharge all Federal, State and local taxes; andand

(o) Comply with all other covenants set forth in the Bond Documents and Bond Loan documents.

§ 1808.611

Covenants of Eligible CDFI with respect to Bond and each Bond Loan.

The Eligible CDFI shall covenant in the Bond Loan agreement that it will:

(a) Furnish to the Qualified Issuer, at the Eligible CDFI's expense, certain annual and periodic financial and performance reporting;

(b) Maintain books and records related to the Bond Loan and Secondary Loans, the collateral and the project that is to be financed by Bond Loan proceeds, and allow inspection thereof;

(c) Preserve its corporate existence and Certified CDFI status;

(d) Comply with all laws to which it is subject;

(e) Maintain insurance, as required by the Qualified Issuer, against such risks as would customarily be maintained by commercially reasonable companies in a similar line of business;

(f) Pay and discharge all Federal, State and local taxes;

(g) Ensure proper use of proceeds of the Bond Loan;

(h) Pay all required administrative expenses;

(i) Indemnify the Guarantor, the CDFI Fund, the Qualified Issuer and the Master Servicer/Trustee and their Affiliates;

(j) Collaterally assign all rights, title, and interest in and to Secondary Loan collateral to the Master Servicer/Trustee;

(k) Maintain the collateral;

(l) Enforce the covenants against the Secondary Borrowers;

(m) Be bound, to the extent applicable, to provisions of the Bond Trust Indenture;

(n) Periodically, as directed by the CDFI Fund, furnish certain information designed to measure the impacts of the Bond Loan and the CDFI Bond Guarantee Program;

(o) Periodically, as directed by the CDFI Fund, furnish to the Qualified Issuer and/or the CDFI Fund updates to the Capital Distribution Plan; and

(p) Comply with all other representations and warranties set forth in the Bond Loan documents.

§ 1808.612

Specific financial covenants of Eligible CDFI.

The Eligible CDFI shall covenant in Bond Loan documents that it will comply with specific financial requirements as required by the Guarantor and the CDFI Fund. Such financial requirements will be determined based upon the quantity and the character of the existing loan facilities of the Eligible CDFI, among other factors. The specific financial covenants may include, but are not limited to, one or more of the following measures: consolidated net asset ratio; consolidated unrestricted net asset

ratio; and minimum available liquidity (or, in the case of Eligible CDFIs that are regulated financial institutions, such ratios and information as may be required by the applicable Appropriate Federal Banking Agency or Appropriate State Agency). The specific financial requirements shall be measured based upon such Eligible CDFI's financial statements prepared in accordance with generally accepted accounting principles and consistent with historically applied accounting policies and practices.

§ 1808.613

Negative covenants of Eligible CDFI.

The Eligible CDFI will covenant in Bond Loan documents that it will comply with certain negative covenants, as required by the CDFI Fund including, but not limited to, that it will:

(a) Not incur or issue additional long-term or short-term debt to the extent that the incurrence of such additional debt would violate the specific financial covenants of such Eligible CDFI under the Bond Loan; and

(b) Not permit liens on all or any part of the Bond Loan collateral, except as permitted pursuant to the Bond Loan documents, and only then to the extent consistent with the applicable laws and regulations governing the Bond Loan and as approved by the CDFI Fund.

§ 1808.614

Covenants of Secondary Borrower with respect to Secondary Loan.

In addition to making specific representations and warranties with respect to the collateral and the project being financed by the Secondary Loan proceeds, each Secondary Borrower shall covenant in the Secondary Loan agreement that it will:

(a) Periodically, as directed by the Eligible CDFI, furnish to the Eligible CDFI certain annual and periodic financial and performance reporting;

(b) Maintain books and records related to the Secondary Loan, the collateral and the project that is to be financed by Bond Loan proceeds, and allow inspection thereof;

(c) Preserve its corporate existence, as applicable;

(d) Comply with all laws to which it is subject;

(e) Maintain insurance, as directed by the Eligible CDFI, against such risks as would customarily be maintained by commercially reasonable companies in a similar line of business;

(f) Pay and discharge all Federal, State and local taxes;

(g) Ensure proper use of proceeds of the Secondary Loan;

(h) Maintain the collateral;

(i) Periodically, as directed by the Eligible CDFI, furnish to the Eligible CDFI certain information designed to measure the impacts of the Bond Loan and the CDFI Bond Guarantee Program; and

(j) Comply with all other representations and warranties set forth in the Secondary Loan documents.

§ 1808.615

Negative covenants of Secondary Borrower.

Any additional debt of the Secondary Borrower shall be in accordance with the requirements set forth in the applicable Secondary Loan Requirements and the Secondary Loan agreement, and may include, but shall not be limited to, that:

(a) The Secondary Borrower will not incur or issue additional long-term or short-term debt payable from and having a lien on all or a portion of the Secondary Loan collateral that is

(1) Equally and ratably secured; or

(2) Superior or senior to the lien thereon of the Secondary Loan as more specifically set forth in the Secondary Loan agreement; and

(b) So long as no event of default has occurred and is continuing, the Secondary Borrower may, subject to the approval of the Eligible CDFI, incur or issue at any time additional debt payable from and having a lien on all or a portion of the Secondary Loan collateral that is subordinate or junior to the lien thereon of the Secondary Loan and enter into subordinate credit facility agreements, provided that no events of default have occurred and are continuing under the Secondary Loan documents or any parity senior loan documents and that such debt meets the requirements set forth in paragraph (a) of this section.

§ 1808.616

Events of default and remedies with respect to Bonds.

(a)

Events of default.

(1) Nonpayment of interest or the Agency Administrative Fee when due and payable;

(2) Nonpayment of principal or prepayment price when due and payable;

(3) The use of Bond Proceeds for any purpose other than an Eligible Purpose; and

(4) Any other events of default set forth in the Bond or the Bond Trust Indenture.

(b)

Default of other Bonds.

(c)

Remedies.

(1) Declaring the entire amount of unpaid principal and interest on the applicable Bond immediately due and payable; and

(2) Exercising all remedies available under the applicable Agreement to Guarantee and the Bond Trust Indenture.

(d) Notice and comment. Prior to imposing any remedies pursuant to this section or the Agreement to Guarantee, the Guarantor shall, to the maximum extent practicable, provide the Qualified Issuer with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Qualified Issuer the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1808.617

Events of default and remedies with respect to Bond Loans.

(a)

Events of default.

(1) Nonpayment of interest when due and payable;

(2) Nonpayment of principal or prepayment price when due and payable;

(3) Failure of the Eligible CDFI to perform any condition or covenant under any Bond Loan document;

(4) Any representation or warranty of the Eligible CDFI made in connection with the Guarantee Application or the Bond Loan is false or incorrect in any material respect;

(5) Principal or interest on any indebtedness of the Eligible CDFI or any subsidiary of the Eligible CDFI in excess of $100,000 is not paid when due (subject to a cure period);

(6) The holder of any junior or parity lien on collateral institutes a proceeding to enforce a lien on the collateral;

(7) The Eligible CDFI files bankruptcy or consents to the appointment of a receiver or trustee for itself or the collateral;

(8) Any money judgment is filed against the Eligible CDFI and remains unvacated for a period of 60 days from filing;

(9) The use of Bond Loan proceeds for any purpose other than an Eligible Purpose; or

(10) Any other events of default set forth in the Bond Loan documents.

(b)

Remedies.

(1) Declaring the entire amount of unpaid principal and interest on the applicable Bond Loan immediately due and payable;

(2) Applying for appointment of a receiver or trustee for the collateral;

(3) At the direction of the Guarantor, terminating the Bond Loan agreement, declaring the entire amount of unpaid principal and interest on the applicable Bond Loan immediately due and payable; and

(4) Exercising all remedies available under the applicable Bond Loan agreement, including declaring the Bond Loan Payment Default Rate in effect.

(c)

Enforcement rights.

§ 1808.618

Events of default and remedies with respect to Secondary Loans.

(a)

Events of default.

(1) Nonpayment of interest when due and payable;

(2) Nonpayment of principal when due and payable;

(3) Failure of the Secondary Borrower to perform any condition or covenant under any Secondary Loan document;

(4) Any representation or warranty of the Secondary Borrower made in connection with the Secondary Loan application or the Secondary Loan documents is false or incorrect in any material respect;

(5) Principal or interest on any indebtedness of the Secondary Borrower or any subsidiary of the Secondary Borrower in excess of $100,000 is not paid when due (subject to a cure period);

(6) The holder of any junior or parity lien on collateral institutes a proceeding to enforce a lien on the collateral;

(7) The Secondary Borrower files bankruptcy or consents to the appointment of a receiver or trustee for itself or the collateral;

(8) Any money judgment is filed against the Secondary Borrower and remains unvacated for a period of 60 days from filing; or

(9) Any other events of default set forth in the Secondary Loan documents.

(b)

Remedies.

§ 1808.619

Reporting requirements.

The Bond Documents and Bond Loan documents shall specify such monitoring and financial

reporting requirements as deemed appropriate by the CDFI Fund including, but not limited to the following:

(a)

DataGeneral.

(1) Disclose the manner in which Bond Proceeds are used, including providing documentation to demonstrate proceeds of the Bond Loans were used for Eligible Purposes;

(2) Demonstrate compliance with the requirements of this part and the Bond Documents;

(3) Evaluate the impact of the CDFI Bond Guarantee Program;

(4) Ensure the Qualified Issuer meets the performance standards over the life of the facilities; and

(5) Accomplish such other purposes that the CDFI Fund may deem appropriate.

(b)

Customer profiles.

(c)

Audits; Access to records.

(2) Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, the Master Servicer/Trustee, as applicable, must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund to ensure compliance with the requirements of this interim rule and to evaluate the impact of the CDFI Bond Guarantee Program.

(3) The Federal Government, including the U.S. Department of the Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to such entities' offices and facilities and all books, documents, records, and financial statements relating to the Guarantee and may copy such documents as they deem appropriate

(4) The CDFI Fund, if it deems appropriate, may prescribe audit and access to record requirements for Eligible CDFIs and Secondary Borrowers.

(d)

Retention of records.

(e)

Data collection and reporting.

(1) Financial statements, including but not limited to:

(i) Annual financial statements for the Qualified Issuer and each Eligible CDFI that have been audited in conformity with generally accepted auditing principles; and

(ii) With respect to any nonprofit Qualified Issuer and any Eligible CDFI that is required to have its financial statements audited pursuant to OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations, annual A-133 audited financial statements. Non-profit Qualified Issuers and Eligible CDFIs that are not required to have financial statements audited pursuant to OMB Circular A-133 must submit to the CDFI Fund a statement signed by the Qualified Issuer or Eligible CDFI's authorized

(2) Pro forma projection of the Qualified Issuer's and Eligible CDFI's respective balance sheet, income statement, and statement of cash flows over the ensuing five years, or such other time period as specified by the CDFI Fund;

(3) Such institution-level and transaction-level reports as may be required by the CDFI Fund;

(4) Information necessary to measure the financial condition of the Eligible CDFI. This includes, but is not limited to, measuring solvency by collecting data on fixed charge coverage, capital adequacy, debt coverage, and measuring liquidity by collecting data on core financial ratios, including current ratios, quick ratios, working capital, and operating liquidity ratio. This will also include credit reporting, financial statement analysis, trend analysis of financial conditions, market valuation, loan performance (30/60/90 payment history) of Bond Loans and Secondary Loans, valuation and eligibility of Secondary Loan collateral, and management and organization changes;

(5) Information necessary to assess Program impact performance and outcome measures, including information necessary to evaluate the credit-worthiness of loan applicants; and

(6) Other such information and reports as may be requested by the CDFI Fund.

(f)

Qualified Issuer reports.

(g)

Regulator information.

(h)

Public inspection.

(i)

Availability of referenced publications.

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (http://www.whitehouse.gov/omb/grants_circulars/

(2) Government Accountability Office materials may be obtained from GAO Distribution, 700 4th Street NW., Suite 1100, Washington, DC 20548.

§ 1808.620

Investments in Guaranteed Bonds ineligible for Community Reinvestment Act Purposes.

Notwithstanding any other provision of law, any investment by a financial institution in Bonds shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901). Other forms of participation by financial institutions in CDFI Bond Guarantee Program transactions may be eligible for inclusion in Community Reinvestment Act records to the extent permitted by the Appropriate Federal Banking Agency.

§ 1808.621

Conflict of interest requirements.

(a)

Provision of Bond Loans or Secondary Loans to Affiliates.

(i) The loan must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Affiliate receiving the loan shall not participate in any way in the decision-making regarding

such loan;

(iii) The board of directors or other governing body of the lender shall approve the extension of the loan; and

(iv) The loan must be provided in accordance with a policy regarding credit to Affiliates that has been approved in advance by the CDFI Fund.

(2) A Qualified Issuer or Eligible CDFI that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union (as such terms are defined in 12 CFR 1805.104) shall comply with the restrictions on insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b)

Standards of conduct.

§ 1808.622

Compliance with government requirements.

In carrying out its responsibilities pursuant to any agreements associated with the CDFI Bond Guarantee Program, all Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, and the Master Servicer/Trustee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders, including restrictions on lending to entities with delinquent Federal debt.

§ 1808.623

Lobbying restrictions.

No fees or funds made available under this part may be expended by a party to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1808.624

Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all CDFI Bond Guarantee Program participants and insiders.

§ 1808.625

CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control a CDFI Bond Guarantee Program participant by reason of any Guarantee provided under the Act for the purpose of any applicable law.

§ 1808.626

Limitation on liability.

The liability of the Federal Government arising out of any fees or funds obtained by a CDFI Bond Guarantee Program participant in accordance with this interim rule shall be limited to the amount of the fees or funds obtained by the CDFI Bond Guarantee Program participant. The Federal Government shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1808.627

Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of any Guarantee, Bond, Bond Loan or Secondary Loan provided under this interim rule must report such incidents to the Office of Inspector General of the U.S. Department of the Treasury.

Pt. 1815

PART 1815ENVIRONMENTAL QUALITY

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Source:

60 FR 54130, Oct. 19, 1995, unless otherwise noted.

§ 1815.100

Policy.

The Community Development Financial Institution Fund's policy is to ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Fund and to reduce any possible adverse effects of Fund decisions and actions upon the quality of the human environment.

§ 1815.101

Purpose.

This part supplements Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended, and describe how the Community Development Financial Institutions Fund intends to consider environmental factors and concerns in the Fund's decisionmaking process. This part applies only to the Fund and not to any other bureau, office or organization within the Department of the Treasury.

§ 1815.102

Definitions.

(a) For the purpose of this part:

(1)

Act

et seq.

(2)

Application

(3)

CEQ regulations

(4)

Comprehensive Business Plan

(5)

Consumer Loans

(6)

Decisionmaker

(7)

EIS

(8)

Fund

(9)

NEPA

(10)

Project

(b) Other terms used in this part are defined in 40 CFR part 1508 of the CEQ regulations.

§ 1815.103

Designation of responsible Fund official.

The Director of the Fund is the designated Fund official responsible for implementation and operation of the Fund's policies and procedures on environmental quality and control.

§ 1815.104

Specific responsibilities of the designated Fund official.

The designated Fund official shall:

(a) Coordinate the formulation and revision of Fund policies and procedures on matters pertaining to environmental quality and control;

(b) Establish and maintain working relationships with relevant government agencies (including Federal, state and local) concerned with environmental matters;

(c) Develop procedures within the Fund's planning and decisionmaking

(d) Develop, monitor, and review the Fund's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(e) Monitor processes to ensure that the Fund's procedures regarding consideration of environmental quality are achieving their intended purposes;

(f) Advise the officers and employees of the Fund of technical and management requirements of environmental analysis, of appropriate expertise available, and, with the assistance of the Department of the Treasury's Office of the General Counsel, of relevant legal developments;

(g) Monitor the consideration and documentation of the environmental aspects of Fund planning and decisionmaking processes by appropriate officers and employees of the Fund;

(h) Ensure that all environmental assessments and, where required, all EISs are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Fund;

(i) Ensure that, as required, a legislative EIS is submitted with all proposed legislation;

(j) Consolidate and transmit to appropriate parties the Fund's comments on EISs and other environmental reports prepared by other agencies;

(k) Acquire information and prepare appropriate reports on environmental matters required of the Fund; and

(l) Coordinate the Fund's efforts to make available to other parties information and advice on the Fund's policies for protecting and enhancing the quality of the environment.

§ 1815.105

Major decision points.

(a) The possible environmental effects of an Application, including any Comprehensive Business Plan, must be considered along with technical, economic, and other factors throughout the decisionmaking process. For most Fund actions there are two distinct stages in the decisionmaking process:

(1) Preliminary approval stage, at which point applications are selected for funding; and

(2) Final approval and funding stage.

(b) Environmental review shall be integrated into the decisionmaking process of the Fund as follows:

(1) During the preliminary approval stage, the designated Fund official shall determine whether the Application proposes actions which are categorically excluded, or normally require an environmental assessment or an EIS;

(2) If the designated Fund official determines that the Application proposes actions which normally require an environmental assessment or an EIS, the applicant shall be informed that the final approval and funding, in addition to any other conditions, is contingent upon:

(i) The applicant supplying to the Fund all information necessary for the Fund to perform or have performed any environmental review required by this part;

(ii) The applicant not using any Fund financial assistance to perform any of such proposed actions in the Application that affect the physical environment until Fund approval is received; and

(iii) The outcome of the environmental review required by this part;

(3) The Fund will perform or have performed the environmental reviews required by this part;

(4) A preliminary approval of an Application may be withdrawn or further conditions may be imposed based upon the outcome of an environmental review required by this part; and

(5) If the designated Fund official determines that the Application proposes actions that require an environmental assessment or an EIS, the environmental assessment and/or EIS must be completed and circulated prior to the use of Federal funds for any activity that triggers the need for an

environmental assessment and/or EIS.

§ 1815.106

Supplemental environmental review.

(a) The designated Fund official shall determine whether the proposed actions in the Application are sufficiently definite to perform a meaningful environmental review during the preliminary approval stage.

(b) If the designated Fund official determines that the Application is sufficiently definite to perform a meaningful environmental review during the preliminary approval stage, no conditions for supplemental environmental review shall be imposed.

(c) If the designated Fund official determines that the Application, or any part of the Application, is not sufficiently definite to complete a meaningful environmental review during the preliminary approval stage, the Fund shall require a supplemental environmental review prior to the taking of any action directly using Fund financial assistance that is not categorically excluded from environmental review or for which an environmental assessment or EIS has not been approved by the Fund. The applicant shall notify the designated Fund official when proposing any action requiring a supplemental environmental review and shall supply to the Fund all information necessary for the Fund to perform the supplemental environmental review. The Fund shall perform or have performed such a supplemental environmental review. The applicant shall not use any Fund financial assistance to perform any of the proposed actions requiring a supplemental environmental review that affect the physical environment until Fund approval for such action is received.

§ 1815.107

Determination of review requirement.

In deciding whether to prepare an EIS, the designated Fund official shall determine whether the proposal is one that normally:

(a) Requires an EIS;

(b) Requires an environmental assessment, but not necessarily an EIS; or

(c) Does not require either an EIS or an environmental assessment (categorical exclusion).

§ 1815.108

Actions that normally require an EIS.

(a) If necessary, the Fund shall perform or have performed an environmental assessment to determine if an Application, or any portion of an Application, requires an EIS. However, it may be readily apparent that a proposed action in an Application will have a significant impact on the environment; in such cases, an environmental assessment is not required and the Fund shall immediately begin to prepare, or have prepared, an EIS.

(b) An EIS normally is required where an Application proposes to directly use financial assistance from the Fund for any Project that would:

(1) Remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units, or would result in the construction or installation of 2,500 or more new housing units, or which would provide sites for 2,500 or more new housing units; or

(2) Remove, demolish, convert, or substantially rehabilitate 1,500,000 square feet or more of commercial space, or would result in the construction or installation of 1,500,000 square feet or more of new commercial space, or which would provide sites for 1,500,000 square feet or more of new commercial space.

§ 1815.109

Preparation of an EIS.

(a) If the Fund determines that an EIS should be prepared, it shall publish a notice of intent in the Federal Register

(b) The Fund may supplement a draft or final EIS at any time. The Fund shall prepare or have prepared a supplement to either the draft or final EIS when:

(1) Substantial changes are proposed to an action contained in the draft or final EIS that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or

(2) Actions are proposed which relate or are similar to other action(s) taken or proposed and that together have a cumulatively significant impact on the environment.

§ 1815.110

Categorical exclusion.

The CEQ regulations provide for the categorical exclusion of actions that do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). Therefore, neither an environmental assessment nor an EIS is required for such actions. An action which falls into one of the categories below may still require the preparation of an EIS or environmental assessment if the designated Fund official determines it meets the criteria stated in § 1815.109 or involves extraordinary circumstances that may have a significant environmental effect. The Fund has determined the following categorical exclusions:

(a) Actions directly related to the administration or operation of the Fund (e.g. personnel actions, including, but not limited to, staff recruitment and training; purchase of goods and services for the Fund, including, but not limited to, furnishings, equipment, supplies and services; space acquisition; property management; and security);

(b) Actions directly related to and implementing proposals for which an environmental assessment or an environmental assessment and EIS have been prepared;

(c) Actions directly related to the granting or receipt of Bank Enterprise Act awards pursuant to part 1806 of this chapter;

(d) Actions directly related to training and/or technical assistance;

(e) Projects for the acquisition, disposition, rehabilitation and/or modernization of 500 existing housing units or less when all the following conditions are met:

(1) Unit density is not increased more than 20 percent;

(2) The Project does not involve changes in land use from nonresidential to residential;

(3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(4) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(f) Projects for the construction of 200 housing units or less when all the following conditions are met:

(1) The Project does not involve changes in existing land use from nonresidential to residential; and

(2) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(g) Projects for the acquisition, disposition, rehabilitation and/or modernization of 200,000 square feet or less of existing commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential;

(2) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(3) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

(h) Projects for the construction of 100,000 square feet or less of commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential: and

(2) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

(i) Projects for the acquisition of an existing structure, provided that the property to be acquired is in place and will be retained in the same use;

(j) Projects involving Fund financial assistance of $1,000,000 or less;

(k) Actions directly related to the provision of residential tenant-based rental assistance, Consumer Loans, health care, child care, educational, cultural and/or social services;

(l) Actions involving Fund financial assistance that is used to increase the

(m) Actions where no use of Federal funds is involved in the activity or Project; and

(n) Actions directly related to the provision of working capital, the acquisition of machinery and equipment or the purchase of inventory, raw materials or supplies.

§ 1815.111

Actions that require an environmental assessment.

If a Project or action is not one that normally requires an EIS and does not qualify for categorical exclusion, the Fund shall prepare, or have prepared, an environmental assessment.

§ 1815.112

Preparation of an environmental assessment.

(a) The Fund shall begin the preparation of an environmental assessment as early as possible after the designated Fund official has determined that it is required. The Fund may prepare an environmental assessment at any time to assist planning and decisionmaking.

(b) An environmental assessment is a concise public document used to determine whether to prepare an EIS. An environmental assessment aids in complying with the NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary. The environmental assessment shall contain brief discussions of the following topics:

(1) Purpose and need for the proposed action;

(2) Description of the proposed action;

(3) Alternatives considered, including the no action alternative;

(4) Environmental effects of the proposed action and alternative actions; and

(5) Listing of agencies, organizations or persons consulted.

(c) The most important or significant environmental consequences and effects on the areas listed below should be addressed in the environmental assessment. Only those areas which are specifically relevant to the particular proposal should be addressed. Those areas should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

(1) Natural/ecological features (such as floodplain, wetlands, coastal zones, wildlife refuges, and

endangered species);

(2) Air quality;

(3) Sound levels;

(4) Water supply, wastewater treatment and water runoff;

(5) Energy requirements and conservation;

(6) Solid waste;

(7) Transportation;

(8) Community facilities and services;

(9) Social and economic;

(10) Historic and aesthetic; and

(11) Other relevant factors.

(d) If the Fund completes an environmental assessment and determines that an EIS is not required, then the Fund shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by the Fund as specified in 40 CFR 1506.6 of the CEQ regulations.

§ 1815.113

Public involvement.

All information collected by the Fund pursuant to this part shall be available to the public consistent with the CEQ regulations. Interested persons may obtain information concerning any pending EIS or any other element of the environmental review process of the Fund by contacting the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., room 5116, Washington, DC 20220, or such other contact entity designated by the Fund.

§ 1815.114

Fund decisionmaking procedures.

To ensure that at major decisionmaking points all relevant environmental concerns are considered by the Decisionmaker, the following procedures are established:

(a) An environmental document, i.e., the EIS, environmental assessment, finding of no significant impact, or notice of intent, in addition to being prepared at the earliest point in the decisionmaking process, shall accompany the relevant proposal or action through the Fund's decisionmaking process to

(b) The Decisionmaker shall consider in its decisionmaking process only those alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decisionmaker shall consider all comments received during any comment process and all alternatives described in the EIS. A written record of the consideration of alternatives during the decisionmaking process shall be maintained; and

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Fund.

§ 1815.115

OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505-0153 (expires September 30, 1998).

PARTS 1816-1899 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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