

Proposed Rules

Federal Register

Vol. 74, No. 148

Tuesday, August 4, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 914

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1235

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1732

RIN 2590-AA10

Record Retention

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing a Record Retention regulation. The proposed regulation would set forth record retention requirements with respect to the record management programs of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, and the Office of Finance consistent with the safety and soundness authority of FHFA under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended.

DATES: Comments on the proposed regulation must be received in writing on or before October 5, 2009. For additional information, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: You may submit your comments on the proposed regulation, identified by regulatory information number (RIN) 2590-AA10, by any one of the following methods:

- U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:

The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA10, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA10, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments may be sent by e-mail to RegComments@fhfa.gov. Please include "RIN 2590-AA10" in the subject line of the message.

- *Federal eRulemaking:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the Agency. Please include "RIN 2590-AA10" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Andra Grossman, Senior Counsel, telephone (202) 343-1313 (not a toll-free number); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed regulation, and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <http://www.fhfa.gov>.

In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

II. Background

A. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act), and the Federal Home Loan Bank Act (12 U.S.C. 1421-1449) to establish FHFA as an independent agency of the Federal government.¹ FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (Banks) (collectively, regulated entities) to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulations, guidelines and orders issued by the Director of FHFA (Director), and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511).

The Office of Finance is a joint office of the Banks that was established by a predecessor to FHFA. The Office of Finance is governed by a three-person board of directors consisting of two Bank presidents and one independent member. Under the regulations of the Federal Housing Finance Board (FHFB), the Office of Finance is subject to the same regulatory oversight authority and enforcement powers as are the Banks and their respective directors, officers, and employees.² The Office of Finance also is subject to the cease-and-desist authority of FHFA and its directors, officers and management are subject to

¹ See Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, section 1101 of HERA.

² 12 CFR 985.4 and 985.7.

the removal and prohibition authority of FHFA.³ Although the Office of Finance is not directly covered by the Safety and Soundness Act, it is subject to the Director's "general regulatory authority" under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)), as amended by HERA. The Director is required to exercise that authority as necessary to ensure that the purposes of the Safety and Soundness Act, the authorizing statutes, and other applicable law are carried out. Based on its general regulatory authority over the Office of Finance, FHFA is proposing that this regulation apply to the Office of Finance.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the FHFB will be abolished one year after enactment of the HERA. However, the regulated entities and the Office of Finance continue to operate under regulations promulgated by OFHEO and FHFB; and such regulations are enforceable by the Director of FHFA until such regulations are modified, terminated, set aside, or superseded by the Director of FHFA.⁴

B. Record Retention and Prudential Management and Operation Standards

The Safety and Soundness Act provides that the Director is to establish standards for each regulated entity and the Office of Finance to maintain adequate records, in accordance with consistent accounting policies and practices that enable the Director to evaluate the financial condition of each regulated entity and the Office of Finance and such other operational and management standards as the Director determines to be appropriate.⁵ The Safety and Soundness Act further provides the Director with general supervisory and regulatory authority over the regulated entities and the Office of Finance, and requires the Director to ensure that they operate in a safe and sound manner.⁶ Accordingly, this proposed regulation would address the record retention requirements of each regulated entity and the Office of Finance. The proposed regulation, when published in its final form, would supersede 12 CFR 914.3 (FHFB Access to Books and Records) and 12 CFR part 1732 (OFHEO Record Retention).

The proposed regulation would require the regulated entities and the Office of Finance to establish and maintain a record retention program to ensure that records are readily

accessible for examination and other supervisory purposes. FHFA recognizes that the effectiveness of the examination process is dependent upon the prompt production of complete and accurate records. FHFA, through the supervisory process, must have access to the records of a regulated entity and the Office of Finance that are necessary to determine the financial condition of the regulated entity and the Office of Finance or the details or the purpose of any transaction that may have a material effect on the financial condition of the regulated entity and the Office of Finance.

Retention of such records not only facilitates the examination process, but also allows a regulated entity and the Office of Finance to manage more effectively its business and detect improper behavior that might cause financial damage. Additionally, such records serve as documentation for a regulated entity and the Office of Finance in any controversy over its business activities or transactions.

The importance of sound record retention policies and procedures by regulated institutions also has been recognized by Congress and other federal regulators. Adequate record retention by the institutions has been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, and has been identified as a requisite component of an institution's operation and management on a safety and soundness basis.⁷

In addition to facilitating the oversight and enforcement of federal banking laws, adequate record retention has been recognized by Congress as being essential to the oversight and enforcement of the federal securities laws. For example, as mandated by section 802 of the Sarbanes-Oxley Act,⁸ the U.S. Securities and Exchange Commission adopted rules requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.⁹ The proposed requirements would have no effect on the policies, rules, or guidance of other federal agencies that may require record retention terms or

practices different from those set forth in the proposal.

Section 1313(f) of the Safety and Soundness Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed regulation, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a revision of the proposed amendment as it relates to the Banks.

III. Section-by-Section Analysis

Section 1235.1 Purpose and Scope

This proposed section provides the purpose of the regulation is to set forth minimum requirements in connection with the record retention program of each regulated entity and the Office of Finance. Such requirements would be intended to ensure that complete and accurate records of each regulated entity and the Office of Finance are readily accessible by FHFA for examination and other supervisory purposes.

Section 1235.2 Definitions

This proposed section would provide definitions for the terms contained in the proposed regulation.

Active record would be defined as a record that is necessary to conduct the current business of an office or business unit of a regulated entity or the Office of Finance, and therefore, readily available for consultation and reference.

Director would be defined as the Director of FHFA, or his or her designee.

Electronic record would be defined as a record created, generated, communicated, or stored by electronic means.

E-mail would be defined as electronic mail, which is a method of communication in which—

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

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

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

(4) Messages are held in storage until called for by the addressee, including

³ 12 U.S.C. 4631(a) and 4636a(a).

⁴ See sections 1302 and 1312 of HERA.

⁵ 12 U.S.C. 4513b(a)(10) and (11).

⁶ 12 U.S.C. 4511(b), 4513(a).

⁷ See, e.g., 12 U.S.C. 1829b, and the Guidelines and Interagency Standards for Safety and Soundness at 12 CFR part 30, Appendix A, II, B.

⁸ Public Law 107-204, 116 Stat. 745 (2002).

⁹ 17 CFR part 210.

any attachment of separate electronic files.

Employee would be defined as any officer or employee of a regulated entity and the Office of Finance or any conservator appointed by FHFA.

Federal Home Loan Bank or *Bank* would be defined as a Bank established under the Federal Home Loan Bank Act; the term “Federal Home Loan Banks” or “Banks” would be defined to mean, collectively, all the Federal Home Loan Banks.

FHFA would be defined as the Federal Housing Finance Agency.

Financing Corporation (FICO) would mean the entity established by the Competitive Equality Banking Act of 1987, as a mixed-ownership government corporation whose purpose is to function as a financing vehicle for the Federal Savings & Loan Insurance Corporation. FICO has a board of directors consisting of the managing director of the Office of Finance and two Bank presidents.

Inactive record would be defined as a record that is seldom used but must be retained by a regulated entity and the Office of Finance for fiscal, legal, historical, or vital records purposes.

Office of Finance would be defined as the Office of Finance of the Federal Home Loan Bank System.

Record would be defined as any information, whether generated internally or received from outside sources by a regulated entity or the Office of Finance or employee, maintained in connection with a regulated entity or Office of Finance business (which business, in the case of the Office of Finance, shall include any functions performed with respect to the FICO), regardless of the following—

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

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

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

(4) Whether the information is active or inactive.

Record hold would be defined as a requirement, an order, or a directive

from a regulated entity, the Office of Finance or FHFA that the regulated entity or the Office of Finance is to retain records relating to a particular issue in connection with an actual or a potential FHFA examination, investigation, enforcement proceeding, or litigation of which the regulated entity and the Office of Finance has received notice from FHFA.

Record retention schedule would be defined as a schedule that details the categories of records a regulated entity or the Office of Finance is required to retain and the corresponding retention periods. The record retention schedule includes all media, such as microfilm and machine-readable computer records, for each record category. Reproductions are also included for each record category if the original of the official record is not available.

Regulated entity would be defined as the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, or any Federal Home Loan Bank; the term “regulated entities” would be defined to mean, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Retention period would be defined as the length of time that records must be kept before they are destroyed. Records not authorized for destruction have a retention period of “permanent.”

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

Vital records would be defined as records that are needed to meet operational responsibilities of a regulated entity or the Office of Finance under emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of a regulated entity or the Office of Finance. Emergency operating records are the type of vital records essential to the continued functioning or reconstitution of a regulated entity or the Office of Finance during and after an emergency. A vital record may be both an emergency operating record and a legal and financial rights record.

Section 1235.3 Establishment and Evaluation of Record Retention Program

This proposed section would require each regulated entity and the Office of Finance to establish and maintain a

written record retention program and provide a copy of such program to the Deputy Director of the Division of Enterprise Regulation and the Deputy Director of the Division of Federal Home Loan Bank Regulation, or his or her designee (Deputy Director), as appropriate, within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made.

It would also require management of the regulated entity and the Office of Finance to evaluate in writing the adequacy and effectiveness of the record retention program at least every three years and provide a copy of the evaluation to the board of directors and the appropriate Deputy Director.

Section 1235.4 Minimum Requirements of Record Retention Program

This proposed section would provide the minimum requirements for the record retention program of each regulated entity and the Office of Finance, including requirements relating to a record retention schedule.

Section 1235.5 Record Hold

This proposed section would address record retention methods, record access and retrieval policies, and notification procedures for employees. Moreover, the section would require a regulated entity's or the Office of Finance's employee who is aware of a potential FHFA investigation, enforcement proceeding, or litigation involving the regulated entity or the Office of Finance or an employee to notify immediately the legal department of the regulated entity or the Office of Finance and retain any records that may be relevant to such investigation, enforcement proceeding, or litigation.

Section 1235.6 Access to Records

This proposed section would set forth the requirement that records must be readily available for inspection within a reasonable period upon request by FHFA, at a location acceptable to FHFA. For requests made during the course of an onsite examination and pursuant to an examination's scope, a reasonable period is no longer than one business day and for requests for documents made outside of an onsite examination, a reasonable period is presumed to be three business days.

Section 1235.7 Supervisory Action

This proposed section would provide that failure by a regulated entity or the Office of Finance to comply with the requirements of the proposed regulation may subject the regulated entity or the

Office of Finance, or its board members, officers, or employees to supervisory action by FHFA. The section also would provide that the proposed regulation does not limit the authority of FHFA under its safety and soundness mandate to take other actions such as conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations.

Regulatory Impact

Paperwork Reduction Act

Because the proposed regulation pertains to the regulated entities and the Office of Finance, it does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed regulation under the Regulatory Flexibility Act. FHFA certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the regulated entities and the Office of Finance, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 914

Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 1235

Federal home loan banks, Government-sponsored enterprises, Records, Reporting and recordkeeping requirements.

12 CFR Part 1732

Government-sponsored enterprises, Records, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4513b, FHFA proposes to amend Chapters IX, XII and XVII of title 12 of the Code of Federal Regulations, as set forth below:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 914—DATA AVAILABILITY AND REPORTING

1. The authority citation for part 914 is revised to read as follows:

Authority: 12 U.S.C. 1440 and 4526.

§ 914.3 [Removed and reserved]

2. Remove and reserve § 914.3.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER B—ENTITY REGULATIONS

3. Add part 1235 to subchapter B to read as follows:

PART 1235—RECORD RETENTION

Sec.

1235.1 Purpose and scope.

1235.2 Definitions.

1235.3 Establishment and evaluation of record retention program.

1235.4 Minimum requirements of record retention program.

1235.5 Record hold.

1235.6 Access to records.

1235.7 Supervisory action.

Authority: 12 U.S.C. 4511(b), 4513(a), 4513b(a)(10) and (11), 4526.

§ 1235.1 Purpose and scope.

The purpose of this part is to set forth minimum requirements in connection with the record retention program of each regulated entity and the Office of Finance. The requirements are intended to ensure that complete and accurate records of each regulated entity and the Office of Finance are readily accessible by FHFA for examination and other supervisory purposes.

§ 1235.2 Definitions.

For purposes of this part, the term—

Active record means a record that is necessary to conduct the current business of an office or business unit of a regulated entity and the Office of Finance, and therefore, is readily available for consultation and reference.

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

Electronic record means a record created, generated, communicated, or stored by electronic means.

E-mail means electronic mail, which is a method of communication in which—

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

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

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

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

Employee means any officer or employee of a regulated entity or the Office of Finance or of any conservator appointed by FHFA.

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

FHFA means the Federal Housing Finance Agency.

Financing Corporation (FICO) means the entity established by the Competitive Equality Banking Act of 1987, as a mixed-ownership government corporation whose purpose is to function as a financing vehicle for the Federal Savings & Loan Insurance Corporation. FICO has a board of directors consisting of the managing director of the Office of Finance and two Bank presidents.

Inactive record means a record that is seldom used but must be retained by a regulated entity or the Office of Finance for fiscal, legal, historical, or vital records purposes.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System.

Record means any information, whether generated internally or received from outside sources by a regulated entity or the Office of Finance or employee, maintained in connection with a regulated entity or Office of Finance business (which business, in the case of the Office of Finance, shall include any functions performed with respect to the Financing Corporation), regardless of the following—

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

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

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

(4) Whether the information is active or inactive.

Record hold means a requirement, an order, or a directive from a regulated entity, the Office of Finance, or FHFA that the regulated entity or the Office of Finance is to retain records relating to a particular issue in connection with an actual or a potential FHFA examination, investigation, enforcement proceeding, or litigation of which the regulated entity or the Office of Finance has received notice from FHFA.

Record retention schedule means a schedule that details the categories of records a regulated entity or the Office of Finance is required to retain and the corresponding retention periods. The record retention schedule includes all media, such as microfilm and machine-readable computer records, for each record category. Reproductions are also included for each record category if the original of the official record is not available.

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

Retention period means the length of time that records must be kept before they are destroyed. Records not authorized for destruction have a retention period of "permanent."

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended.

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

§ 1235.3 Establishment and evaluation of record retention program.

(a) *Establishment.* Each regulated entity and the Office of Finance shall establish and maintain a written record retention program and provide a copy of such program to the Deputy Director of the Division of Enterprise Regulation, or his or her designee, or the Deputy Director of the Division of Federal Home Loan Bank Regulation, or his or her designee (Deputy Director), as appropriate, within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made.

(b) *Evaluation.* Management of each regulated entity and the Office of Finance shall evaluate in writing the adequacy and effectiveness of the record retention program at least every three years and provide a copy of the evaluation to the board of directors and the appropriate Deputy Director.

§ 1235.4 Minimum requirements of record retention program.

(a) *Requirements.* The record retention program established and maintained by each regulated entity and the Office of Finance under § 1235.3 shall:

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

(2) Be reasonably designed to assure that the format of retained records and the retention period—

(i) Are adequate to support litigation and the administrative, business, external and internal audit functions of the regulated entity or the Office of Finance;

(ii) Comply with requirements of applicable laws and regulations; and

(iii) Permit ready access by the regulated entity or the Office of Finance and, upon request, by the examination and other staff of FHFA by reasonable means, consistent with the nature and availability of the records and existing information technology.

(3) Assign in writing the authorities and responsibilities for record retention activities;

(4) Include policies and procedures concerning record holds, consistent with § 1235.5;

(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, and operational and business requirements;

(6) Include adequate security and internal controls to protect records from

unauthorized access and data alteration; and

(7) Provide for adequate back-up and recovery of electronic records.

(b) *Training.* The record retention program shall 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 a regulated entity or the Office of Finance.* The record retention program of a regulated entity and the Office of Finance shall—

(1) Address how employees and, as appropriate, how agents or independent contractors consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance, will receive prompt notification of a record hold;

(2) Designate an individual to communicate specific requirements and instructions, including, when necessary, the instruction to cease immediately any otherwise permissible destruction of records; and

(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, who has received notice of a potential investigation, enforcement proceeding, or litigation by FHFA involving the regulated entity or the Office of Finance or an employee, or otherwise has actual knowledge that an issue is subject to such an investigation, enforcement proceeding or litigation, shall notify immediately the legal department of the regulated entity or the Office of Finance and shall retain any records that may be relevant in any way to such investigation, enforcement proceeding, or litigation.

(b) *Method of record retention.* The record retention program of each regulated entity and the Office of Finance shall address the method by which the regulated entity or the Office of Finance will retain records during a record hold. Specifically, the program shall describe the method for the continued preservation of electronic records, including e-mails, and the conversion of records from paper to electronic format as well as any alternative storage method.

(c) *Access to and retrieval of records during a record hold.* The record retention program of each regulated entity or the Office of Finance shall ensure access to and retrieval of records by the regulated entity or the Office of Finance and access, upon request, by FHFA, during a record hold. Such access shall be by reasonable means, consistent with the nature and availability of the records and existing information technology.

§ 1235.6 Access to records.

(a) *Access to records.* Each regulated entity or the Office of Finance shall make its records readily available for inspection and other supervisory purposes within a reasonable period upon request by FHFA, at a location acceptable to FHFA and by reasonable means, consistent with the nature and availability of the records and existing information technology.

(b) *Reasonable period.* For requests for documents made during the course of an on-site examination and pursuant to the examination's scope, a reasonable period is presumed to be no longer than one business day. For requests for documents made outside of an on-site examination, a reasonable period is presumed to be three business days.

§ 1235.7 Supervisory action.

(a) *Supervisory action.* Failure by a regulated entity or the Office of Finance to comply with this part may subject the regulated entity or the Office of Finance or the board members, officers, or employees thereof to supervisory action by FHFA under the Safety and Soundness Act, including but not limited to cease-and-desist proceedings, temporary cease-and-desist proceedings, and civil money penalties.

(b) *No limitation of authority.* This part does not limit or restrict the authority of FHFA to act under its safety and soundness mandate, in accordance with the Safety and Soundness Act. Such authority includes, but is not limited to, conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules, and regulations.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 1732—[REMOVED]

4. Remove part 1732.

Dated: July 28, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9-18489 Filed 8-3-09; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 985, 989

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1273, 1274

RIN 2590-AA30

Board of Directors of Federal Home Loan Bank System Office of Finance

AGENCY: Federal Housing Finance Agency; Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: Governed by the Federal Housing Finance Agency's (FHFA) regulations, the Federal Home Loan Bank System's (System) Office of Finance, issues debt ("consolidated obligations") on which the Federal Home Loan Banks (Banks) are jointly and severally liable and publishes combined financial reports on the Banks so that investors in the consolidated obligations can assess the strength of the System that stands behind them. The Office of Finance (OF) is governed by a board of directors, the composition and functions of which are determined by FHFA's regulations. The FHFA's experience with the System and with the OF's combined financial reports during the recent period of market stress suggests that the OF and the System could benefit from a reconstituted and strengthened board. This proposed regulation is intended to achieve that.

DATES: Comments on the proposed regulation must be received on or before October 5, 2009. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit your comments on the proposed regulation, identified by regulatory information number (RIN) 2590-AA30 by any of the following methods:

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA30, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA30, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail at RegComments@FHFA.gov. Please include "RIN 2590-AA30" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:

Joseph A. McKenzie, 202-408-2845, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Neil Crowley, Deputy General Counsel, 202-343-1316, or Thomas E. Joseph, Senior Attorney-Advisor, 202-414-3095, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The FHFA invites comments on all aspects of the proposed regulation, and will adopt a final regulation with appropriate changes after taking all comments into consideration. Copies of all comments will be posted on the Internet Web site at <https://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

II. Background

A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), the oversight responsibilities of the Federal Housing Finance Board (FHFB or Finance Board) over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development to a new independent executive branch agency, the FHFA. See *id.* at § 1101, 122 Stat. 2661-62 (*amending* 12 U.S.C. 4511). The FHFA