(A) Is submitted for placement through a deposit placement network by an agent institution; and

(B) Does not consist of funds that were obtained for the agent institution, directly or indirectly, by or through a deposit broker before submission for placement through a deposit placement network.

(iii) *Deposit placement network* means a network in which an insured depository institution participates, together with other insured depository institutions, for the processing and receipt of reciprocal deposits.

(iv) *Network member bank* means an insured depository institution that is a member of a deposit placement network.

(v) *Reciprocal deposits* means deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks.

Dated at Washington, DC, on September 12, 2018.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2018–20303 Filed 9–25–18; 8:45 am]

**BILLING CODE 6714–01–P**

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## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1271

**RIN 2590–AA99**

## Miscellaneous Federal Home Loan Bank Operations and Authorities—Financing Corporation Assessments

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to amend its regulations pertaining to the operation of the Financing Corporation (FICO), a vehicle established by one of FHFA's predecessors to issue bonds, the proceeds of which were used to help fund the resolution of failed savings and loan associations during the 1980s. The last of those FICO bonds will mature in September 2019. By statute, FICO obtains the monies to pay the interest on those bonds by assessing depository institutions (FICO assessments) that are insured by the Federal Deposit Insurance Corporation (FDIC). The proposed rule addresses the manner in which FICO would conduct the 2019 FICO assessments, which are expected to be the last of those assessments. Specifically, the proposed rule would provide that all payments made by FDIC-insured depository institutions during 2019 will be final, and that no adjustments to prior FICO assessments would be permitted after March 26, 2019, the projected date as of which the FDIC will finalize the amounts of the final collection for the 2019 FICO assessments.

**DATES:** FHFA must receive written comments on or before October 26, 2018.

**ADDRESSES:** You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA99 by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comments to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@FHFA.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AA99'' in the subject line of the message.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA99, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *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–AA99, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW, Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:** Louis M. Scalza, Associate Director, Examinations, Office of Safety & Soundness Examinations, *Louis.Scalza@fhfa.gov,* (202) 649–3710; Winston Sale, Assistant General Counsel, *Winston.Sale@fhfa.gov,* (202) 649–3081; or Neil R. Crowley, Deputy General Counsel, *Neil.Crowley@fhfa.gov,* (202) 649–3055 (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Comments

FHFA invites comment on all aspects of the proposed rulemaking, which FHFA is publishing with a 30-day comment period. After considering the comments, FHFA will develop a final regulation. Copies of all comments received will be posted without change on the FHFA website at *http://www.fhfa.gov,* and will include any personal information you provide, such as your name, address, email address, and telephone number.

### II. Background

FHFA is an independent agency of the federal government established to regulate and oversee the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (Banks), and the Bank System's Office of Finance.[1] FHFA also is responsible for overseeing FICO. The Competitive Equality Banking Act of 1987 [2] amended the Federal Home Loan Bank Act (Bank Act) and authorized FHFA's predecessor to establish FICO, and authorizes the FHFA Director to select the two Bank presidents that serve on its directorate, to prescribe such regulations as are necessary to carry out the statutory provisions relating to FICO, and to oversee the dissolution of FICO.[3]

FICO is a mixed-ownership, tax-exempt government corporation, chartered in 1987 by the former Federal Home Loan Bank Board, one of FHFA's predecessor agencies, pursuant to the Federal Savings and Loan Insurance Corporation (FSLIC) Recapitalization Act of 1987, as amended (Recapitalization Act).[4] The Recapitalization Act's purpose was to recapitalize the FSLIC insurance fund, which had been significantly depleted by a wave of savings and loan (S&L) failures during the S&L crisis of the 1980s. FICO's mission was to provide funding for FSLIC (and later for the FSLIC Resolution Fund after FSLIC's insolvency and later abolishment by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)) by selling bonds to the public. FICO's operations are managed by a directorate composed of the Director of the Office of Finance and two Bank presidents

[1] 12 U.S.C. 4511.

[2] Public Law 100–86, 101 Stat. 552.

[3] *See* 12 U.S.C. 1441(a) (establishment of FICO), (b)(1)(B) (selection of directors), (i) (dissolution, and authority for FHFA to exercise any FICO powers, needed to conclude its affairs), and (j) (authority to prescribe regulations).

[4] *See* 12 U.S.C. 1441(a).

who rotate after serving one year terms.[5] FICO has no permanent staff and utilizes Office of Finance staff to execute its day-to-day functions.

FICO was initially capitalized by issuing stock to the Banks in an aggregate amount of $680 million, apportioned pro rata among the Banks in accordance with a statutory formula.[6] FICO used the proceeds from the stock issuances to purchase U.S. Treasury zero-coupon securities (Zeros), which were to be the sole source of repayment of the principal of the bonds to be issued by FICO. Between 1987 and 1989 FICO issued 14 separate series of 30-year bonds (Obligations) in an aggregate principal amount of approximately $8.1 billion. FICO conveyed the proceeds of the Obligations to FSLIC, to finance its resolution of failed S&Ls.[7] FICO is required by statute to hold the Zeros in a segregated account until they are used to pay the principal due on the Obligations at their maturity.[8] The Obligations began to mature in 2017, and the last Obligation will mature in September 2019.

The Recapitalization Act established a different source for providing funds needed to service the semiannual interest payments on the FICO Obligations.[9] The statute authorized FICO to assess FSLIC-insured depository institutions for the funds needed to pay the interest due on the FICO Obligations.[10] The Deposit Insurance Funds Act of 1996 authorized FICO to assess against institutions with deposits insured by both the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF).[11] Pursuant to the Federal Deposit Insurance Reform Act of 2005, effective March 31, 2006, the BIF and SAIF were merged into the newly created Deposit Insurance Fund (DIF), and thus FICO may assess institutions insured by the DIF.[12] FICO is authorized to assess insured depository institutions only for three purposes: For making interest payments on the FICO Obligations; paying issuance costs for the FICO Obligations; and paying custodial fees associated with the FICO Obligations. The Bank Act, as amended by FIRREA, further provides that FICO is to conduct its assessments in the same manner that the FDIC uses when assessing its insured depository institutions for deposit insurance purposes.[13] FICO and the FDIC entered into a memorandum of understanding in 1997 (Memorandum of Understanding), as amended in 1999, pursuant to which the FDIC collects FICO's assessments from its insured depository institutions quarterly, as agent for FICO.

The FDIC conducts its own Deposit Insurance Fund assessments quarterly (FDIC assessment), with the amount of the FDIC assessment for each insured depository institution being determined based, in part, on data that the institution has submitted to the Federal Financial Institutions Examination Council (FFIEC) in its Consolidated Reports of Condition and Income (call report). If an insured depository institution amends a call report on which a previous FDIC assessment had been calculated and the amendment to the call report would cause the calculation of the prior FDIC assessment to change, the institution may receive an adjustment, which generally appears on an upcoming invoice.[14]

Pursuant to the Memorandum of Understanding, the FDIC collects the FICO assessments from the insured depository institutions quarterly, as agent for FICO, at the same time as the collection of FDIC assessments. Pursuant to the Memorandum of Understanding, FICO assessments are made based on an assessment rate formula adopted by FICO, and approved by the FDIC Board of Directors. One factor in FICO's formula is the deposit insurance assessment base, which (as described above) is calculated using an insured depository institution's call report data. Under the terms of the Memorandum of Understanding, twice per year, FICO notifies the FDIC of the total amounts that would be needed for FICO to make its upcoming Obligation interest payments and annually informs the FDIC of the interest it has earned. Using that information and FICO's assessment rate formula, the FDIC calculates a ''quarterly multiplier'' and applies it to information derived from each institution's call report to determine the FICO assessment for each institution for that calendar quarter. The FDIC then issues an invoice to each insured depository institution detailing both its quarterly FDIC and FICO assessments.[15] Insured depository institutions submit payment for their FDIC and FICO assessments to the FDIC via ACH. The FDIC then transfers the aggregate FICO collections to an account that FICO maintains at the Federal Reserve Bank of New York, from which FICO pays the interest that is due on the FICO Obligations.

In the case of an insured depository institution that amends its call report for a prior period, FICO assessments are adjusted in the same manner as FDIC assessments. Thus, if an amended call report results in an institution having overpaid or underpaid a prior quarter's FICO assessment an adjustment amount will appear on an upcoming invoice, provided that the amendment has been made within three years after the date that the associated FICO payment was due.[16] Pursuant to the Memorandum of Understanding, overpayments arising from amended call reports are generally credited against the next quarter's FICO assessment and underpayments are added to the next quarter's FICO assessment.

With respect to all such refunds for overpayments of prior period FICO assessments once all FICO obligations are paid, however, FICO has no legal obligation to use its own assets (other than those funds obtained from the FICO assessments) to provide monies to any insured depository institutions to make those refunds and does not do so. Indeed, FICO has no legal authority to assess insured depository institutions for the sole purpose of obtaining monies to provide refunds to other insured depository institutions or to spend its own non-assessment assets for that purpose. As a practical matter, because these refunds are processed as credits against the next FICO assessment, they do not require any cash outlay from FICO and all refunds are effectively paid

[5] *See* 12 U.S.C. 1441(b).

[6] *See* 12 U.S.C. 1441(d)(4). FICO issued the stock in a series of transactions between 1987 and 1989, each in anticipation of an issuance of a particular series of the FICO bonds.

[7] FICO used the net proceeds from the first 13 series of its Obligations to purchase nonredeemable capital certificates and nonredeemable nonvoting capital stock issued by the FSLIC. After the FSLIC was abolished in 1989, FICO used the proceeds from its final series of Obligations to purchase nonredeemable capital certificates issued by the FSLIC Resolution Fund, the statutory successor to the FSLIC. *See* 12 U.S.C. 1821a (establishment of FSLIC Resolution Fund). Those instruments have no value and have been charged to FICO's capital.

[8] *See* 12 U.S.C 1441(g)(2).

[9] Interest on each FICO Obligation is paid on the anniversary of its issuance date, and six months after that date each year.

[10] 12 U.S.C. 1441(f)(2). The statute further provides that the FICO assessments are subject to the approval of the FDIC board of directors. FICO and the FDIC have entered into a memorandum of understanding under which FDIC, as agent for FICO, collects the FICO assessments on insured depository institutions, as approved by the FDIC.

[11] Public Law 104–131, 110 Stat. 1213.

[12] Public Law 109–171 sec. 2109(a)(2), 120 Stat. 20.

[13] 12 U.S.C. 1441(f)(2).

[14] *See* 12 U.S.C. 1817(e)(1) (addressing refunds of overpayments of FDIC assessments).

[15] The FDIC provides to each institution a Quarterly Certified Statement Invoice that specifies the total amount of that quarter's assessment, including the FDIC assessment and the FICO assessment for that calendar quarter.

[16] *See* 12 U.S.C. 1817(g)(2) (establishing a three-year statute of limitations on actions by insured depository institutions to recover overpayments from FDIC, and on actions by FDIC to recover underpayments from the insured institutions).

from the assessments on the other insured depository institutions collectively. The principal effect of such refunds is that they modestly reduce the amount of monies actually collected by the FDIC, as agent for FICO, as part of a particular quarter's FICO assessment. Those refund credits, however, may be offset by the additional amounts that the FDIC collects, as an agent for FICO, from other institutions that had previously underpaid a prior FICO assessment.[17] To the extent overpayment credits exceed underpayment collections, such shortfall is made up the following quarter by increasing the total collection amount accordingly. Moreover, because the determination of the quarterly multiplier for setting the FICO assessment involves rounding, any quarterly collection of the FICO assessment may yield slightly more money than the initially projected assessment amount. Pursuant to the Memorandum of Understanding with the FDIC, FICO also maintains a cash reserve that is available to make up modest shortfalls that might arise during a quarterly collection. FICO has never needed to use the cash reserve, because it has always collected sufficient funds to make all required interest payments when due. FHFA anticipates that FICO will draw down the monies in its cash reserve to fund a portion of the remaining interest payments on its Obligations as they come due, which also would reduce the amount needed to be assessed and collected from insured depository institutions during 2019.

As is evident from the above description, the current practice for adjusting individual FICO assessments—to account for either refunds or additional collections—depends on the existence of a subsequent FICO collection that could serve as the source of funds and the means by which any such adjustments may be processed. The last of the FICO bonds will mature during 2019 and FICO is scheduled to make five different interest payments during 2019.[18] FHFA anticipates that the FDIC, as agent for FICO, will collect one FICO assessment during 2019 and that the amounts received by FICO from the March 2019 collections will be sufficient (when combined with any other available funds that FICO will have on hand) to make all remaining interest payments due during 2019. Accordingly, once the final FICO assessment has been collected, there will be no subsequent billing cycle through which an insured depository institution could have a prior FICO assessment adjusted, *i.e.,* the FDIC, which will cease to be collection agent for FICO, will no longer invoice institutions for FICO assessments that could be adjusted to reflect increases or decreases attributable to amendments to their prior period call reports. Because FICO assessments are collected in the same manner as FDIC assessments, the FDIC's billing practices, as agent for FICO, have long included the above-described adjustment provision for the FICO assessments. Thus, FHFA has determined that it would be appropriate, as FICO's regulator, to adopt a rule to make clear that such adjustments must cease after FICO has collected its final assessment from the insured depository institutions, and that FICO has no obligation to make any adjustments to prior FICO assessments.

This rulemaking pertains only to the FICO assessments, which the FDIC collects on behalf of FICO. It does not affect the deposit insurance assessments that the FDIC collects from insured depository institutions, which will continue in their normal manner. The sections below describe the content of the proposed rule.

## III. The Proposed Rule

*Content of the Proposed Rule.* The proposed rule would do four things. First, it would provide that all FICO assessments collected during 2019 will be final, meaning that there will be no possibility of any subsequent adjustments to those assessment amounts. Second, it would provide that after the collection of the final FICO assessment (which is expected to occur on March 29, 2019) no insured depository institution would be entitled to any adjustment of any prior FICO assessment that arises as a result of an amendment to the call report on which the prior assessment had been based. This recognizes the fact that adjustments to prior FICO assessments can only be made as part of the process of collecting a subsequent FICO assessment. Third, it would preserve the existing adjustment practice through the final FICO assessment collection, *i.e.,* it would allow the FDIC, as agent for FICO, to adjust the March 2019 FICO assessment for any institution to reflect amendments that the institution has made to its call reports for any calendar quarters prior to and including the fourth quarter of 2018. This provision is phrased in terms of setting March 26, 2019—the projected date as of which the FDIC will finalize the amounts due for the March 2019 FICO assessment—as the last date for any such call report amendments to affect the institution's FICO assessments.[19] Fourth, the proposal includes a provision that is intended to address the possibility, which FHFA believes to be small, that FICO may need to conduct another assessment in June 2019, which would occur only if the March collection did not yield sufficient monies to make the remaining interest payments on the FICO bonds. This provision has been drafted to preserve the current practice of allowing an insured depository institution to amend the call report on which its June FICO assessments will be based up until the date on which the FDIC finalizes the amounts due from each institution for that quarter. This paragraph provides that any amendments to the call reports for the calendar quarter ending on March 31, 2019 that are submitted after June 25, 2019, the anticipated date on which the FDIC would finalize payments for the collection, will not affect the institution's FICO assessment. Any amended call reports for the first quarter of 2019 submitted prior to that date will be used to calculate the June assessments. This is consistent with current practice for FICO assessments, under which payment amounts for FICO assessments are finalized three days prior to the date of collection.

*Analysis.* In the absence of an ongoing FICO assessment process there is no funding mechanism for FICO to provide an insured depository institution a credit for any overpayment of a prior FICO assessment or to bill it for any underpayment of a prior assessment. FHFA has therefore determined to provide clarity and finality by affirmatively declaring the FICO assessment adjustment practices terminated, effective with the collection

[17] The number of call report amendments submitted during a particular calendar quarter that will affect a FICO assessment will vary, but is small in comparison to the number of insured depository institutions filing call reports with FDIC. Generally speaking, the dollar amounts of the gross FICO refunds and FICO additional collections for any calendar quarter are also small, and the net amounts of such adjustments during a particular quarter often are less than $100,000.

[18] Two interest payments, in the approximate amount of $28 million each, are due during March 2019, and FICO will collect monies needed to make those payments during the December 2018 collection. The remaining three interest payments, in the approximate amounts of $25 million each, are due during April, June, and September 2019, and FICO will collect monies needed to make those payments during the March 2019 collection.

[19] For example, an insured depository institution that amends a prior period call report on or before March 26, 2019 will receive an appropriate adjustment to the assessment amount anticipated to be collected on March 29, 2019. An institution that amends a prior period call report after that date will not receive any adjustment to its prior FICO assessment because there is not expected to be another FICO assessment after that date.

of the final FICO assessment. FHFA is mindful of the statutory requirement that FICO should assess the depository institutions for its costs in the same manner as the FDIC assesses those institutions for deposit insurance purposes. FHFA also understands, however, that the FDIC has an established practice of allowing insured depository institutions to have adjustments made to their prior FDIC assessments if they later amend the call report data on which those assessments were based, provided it occurs within the three-year statutory period, a practice that will not be available when the FICO assessments cease.

A key difference between the FICO assessments and the FDIC assessments is that the FDIC assessments are continual, with no predetermined termination date. The FICO assessment authority, however, is required by statute to cease after FICO has collected sufficient monies to pay the interest and related costs on its Obligations. In light of that difference, FHFA believes that the statutory language requiring FICO to conduct its assessments in the same manner as the FDIC assessments is best read as requiring FICO to follow the FDIC practice for prior period adjustments only for so long as FICO actually is collecting assessments from the insured depository institutions. FHFA has drafted the proposed regulation in that manner, *i.e.,* the proposed rule would preserve the existing FDIC adjustment process through and including what is expected to be the final collection of the FICO assessment in March 2019. Until that final collection has been completed, all insured depository institutions that are eligible to be credited a refund for any prior overpayment of their FICO assessment or to be billed for any prior underpayment of their FICO assessment will be able to continue to have the appropriate adjustment included in the calculation of the amount they are to pay.

For the foregoing reasons, FHFA does not believe that the ''in the same manner'' language of the Bank Act can reasonably be construed to require FICO to provide refunds to, or to collect monies from, insured depository institutions that amend a prior period call report after FICO has ceased its assessments. As noted above, there will be no practical way to process such adjustments because there will be no invoiced amount against which a credit could be applied or to which a surcharge could be added. Moreover, there is no source of funds from which FICO could pay cash refunds because FICO will have used all monies received from its prior assessments to pay the interest and other costs due on its Obligations. FICO also could not assess insured depository institutions to obtain funds to provide refunds to other institutions because its authority is limited to assessing the institutions only for monies needed for interest payments, issuance costs, and custodial fees. Finally, Congress has mandated that FHFA dissolve FICO as soon as practicable after it has repaid the last of its Obligations, which evidences an intent that FICO may not undertake any new activities, such as facilitating collections from and payments to insured institutions, after FICO has repaid its Obligations.

FHFA believes that the most appropriate reading of the Bank Act in these circumstances is that it allows insured depository institutions to continue to receive refunds for prior overpayments (and to continue to be billed for prior underpayments) in the same manner as FDIC assessments through and including the final FICO assessment. That approach gives appropriate effect to the ''in the same manner'' language of the statute without creating any conflict with the provision requiring the prompt dissolution of FICO, and without imposing on FICO any obligations that are not expressly mandated by the Bank Act.

FHFA also does not believe that the proposed rule would have a significant effect on FDIC-insured institutions. As an initial matter, the number of insured depository institutions amending call reports in any calendar quarter that affect their prior FICO assessments typically is small. For example, the number of such amended call reports for the fourth quarter of 2017 was 91, out of approximately 5,600 FDIC-insured depository institutions filing call reports. Moreover, the dollar amount of FICO assessment adjustments also is generally small. For that same period, the gross amount of refunds of prior FICO assessments related to those amended call reports was approximately $24,000, while the gross amount of collections of prior FICO underpayments was approximately $170,000, resulting in a net surplus of collections over refunds of approximately $146,000, *i.e.,* the insured depository institutions generally owe more for underpayments than they are entitled to receive in refunds. From mid-2011 through the last 2017 assessment period, the average net quarterly adjustment of prior FICO assessments resulting from all institutions' amendments to their prior call reports was approximately $95,000 of additional collections of prior FICO underpayments. As noted previously, and notwithstanding the typically modest numbers involved, the proposed rule has been drafted so as to preserve, through the date of the final FICO collection, the current practice of allowing all insured depository institutions to have their FICO assessments adjusted to reflect amendments to their prior call reports up until the date that FDIC finalizes the amount of each institution's final FICO assessment in March 2019.

**IV. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

**V. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities.[20] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets less than or equal to $550 million.[21] As discussed further below, the FHFA certifies that this proposed rule would not have a significant impact on a substantial number of FDIC-insured small entities.

*Description of Need and Policy Objectives*

By statute, FHFA must dissolve FICO as soon as practicable after it has made the final payments of principal and interest due on its Obligations, the last of which matures in September 2019. To facilitate FICO's prompt and orderly dissolution, and for the other reasons described in Section III, above, FHFA is proposing to make all 2019 FICO assessments final and to terminate FICO assessment adjustments as of March 26, 2019.

[20] 5 U.S.C. 601 *et seq.*

[21] 13 CFR 121.201 (as amended, effective December 2, 2014).

*Description of the Proposal*

A description of the proposal is presented in Section III: Contents of the Proposed Rule. Please refer to it for further information.

*Other Federal Rules*

FHFA has exclusive regulatory authority over FICO and has sole responsibility for interpreting and applying the provisions of the Bank Act that govern FICO's operations. For the reasons described in Section III, above, FHFA has determined that the most appropriate way to interpret the provisions of the Bank Act that refer to the manner in which the FDIC conducts its own assessments is to read them as applying only while FICO is conducting its assessments. FHFA has not identified any likely duplication, overlap, and/or potential conflict between the proposed rule and any other federal rule.

*Economic Impacts on Small Entities*

The proposed rule would apply to FICO and the manner in which it conducts its assessments, and could indirectly affect any FDIC-insured depository institutions that have been assessed to pay interest on the FICO's obligations. As of March 2018, the FDIC insured 5,606 depository institutions, of which 4,492 are defined as small banking entities for purposes of the RFA.[22] Each insured depository institution's share of the FICO assessment is based on the insured depository institution's self-reported call report data, which the depository institution may amend after their initial filing with the FFIEC. Because decisions to amend previously filed call reports are solely within the control of the insured depository institution, it is not possible to predict how many depository institutions may amend a prior period call report during any calendar quarter, how many of those institutions amending a prior call report would be small entities for RFA purposes, whether the call report amendments would affect the calculation of an individual institution's prior FICO assessment, the dollar amount by which a prior FICO assessment had changed as a result of an amended call report, or the net amount of all such changes for all insured depository institutions, *i.e.,* whether the dollar amount of all refunds for prior overpayments was greater or less than the dollar amount of all billings for prior underpayments. Based on historical FFIEC data relating to call report amendments that affected individual institution FICO assessments, however, it appears that the proposed rule would not affect a substantial number of small entities, and that the economic effect on those small entities that may be affected by the proposed rule would not be significant. Indeed, the potential net economic effect on those small entities would most likely be positive, meaning that more of them would receive a financial benefit—being relieved of the obligation to pay for any prior underpayment of a FICO assessment—than would experience the negative effect of losing refunds for prior overpayment of FICO assessments.

Between March 2012 and December 2017, there has been an average of approximately 205 FICO assessments amended per calendar quarter, split evenly between refunds and additional collections. Based on the proportion of small entities to the total number of FDIC-insured depository institutions, FHFA has deemed approximately 80 percent of those amendments to have been attributable to small entities. The actual number of small entities amending call reports that affect their FICO assessments is apt to be lower, however, because each institution may amend multiple quarters' call reports at one time. For example, an institution amending a call report from a particular calendar quarter two years ago may also amend some or all of the subsequent call reports. Of the 164 FICO assessment amendments attributable to small banking entities per quarter, if each entity submits an average of two amendments per quarter, approximately 82, or slightly less than two percent, of FDIC-insured small banking entities would be affected per quarter by the proposed rule.

During the same period, the average gross FICO refunds to institutions due to their overpayments of prior FICO assessments was approximately $139,000 per quarter, or an average of about $1,350 per amendment. The average gross additional FICO collection for underpayment of prior FICO assessments was $243,000 per quarter, or $2,370 per amendment. Based on those numbers, and assuming the largest possible estimated refunds, *i.e.,* where an institution amended call reports for each of the twelve calendar quarters in the three year period and was entitled to an overpayment credit for each quarter of $1,350 each, the potential cost to that institution would be $16,200. In a similar fashion, assuming the largest possible estimated billings, *i.e.,* where the institution amended its twelve most recent call reports and had underpaid each of the FICO assessments for those periods, the potential savings to that institution would be $28,440. These figures indicate that the proposed rule would likely not have a significant economic effect on even the smallest banking entities. When viewed in the aggregate, it appears that the most likely net effect on all FDIC insured institutions, including small entities, will be positive because the available data indicates that most adjustments to prior FICO assessments result in the depository institution paying additional amounts to make up for prior underpayments of its prior period FICO assessments, and that the amounts of such billings are greater than the amounts of any refunds.

The proposed rule would pose no regulatory costs for FDIC insured small entities, as their FDIC assessment process would remain in place as currently implemented. Overall assessment costs will be permanently reduced to the extent each entity's FICO assessment is no longer collected. Further, FDIC assessment adjustments would be unaffected by the proposed rule, which typically represent 90 percent of an insured institution's total potential adjustment value. For these reasons and based on the figures cited above, FHFA finds that the proposed rule would not have a significant economic impact on a substantial number of small entities.

*Alternatives Considered*

As discussed previously, FHFA is issuing the proposed rule to provide clarity and finality to an issue—the status of future adjustments to prior FICO assessments—that is not otherwise addressed by the statute. FHFA has considered three other approaches to addressing this issue. First, FHFA considered taking no action. That approach likely would have resulted in insured depository institutions being in the same situation as will be the case under the proposed rule—without any mechanism to process adjustments to their prior FICO assessments—but neither they nor FICO would have had any guidance as to the status of their prior FICO assessments. By providing that all FICO assessments become final and nonrefundable when FICO completes its 2019 assessments, the proposed rule provides certainty to those institutions that they would not have otherwise, and without placing them in any different situation than would be the case if FHFA took no action.

Second, FHFA considered whether, once all FICO obligations are paid, FICO could assess all FDIC-insured institutions or use its own assets to obtain the monies needed to pay refunds to any insured depository

[22] Call Report data as of March 31, 2018.

institutions whose FICO assessments had changed due to amendments to their call reports. FHFA concluded that further assessments are not legally permissible because Congress has authorized FICO to assess FDIC-insured institutions only for three specific purposes—to pay interest on the FICO Obligations, issuance costs, and custodian fees—which means that FICO's assessment authority does not extend to obtaining monies for paying refunds of prior FICO assessments. FICO also could not use its own assets to provide such monies because, as described previously, FICO has no legal obligation under any statute to reimburse insured institutions for their prior overpayments of FICO assessments, and has no authority to spend its assets for any purposes beyond those authorized by statute.

Third, FHFA considered whether FICO could direct the FDIC, as collection agent, to could continue to process adjustments to prior FICO assessments on its own, but deemed that approach not to be legally permissible. The FDIC acts as FICO's agent when collecting the FICO assessments, and as such FDIC's authority derives from, and can be no greater than, FICO's own assessment authority.

*Solicitation of Comments*

FHFA invites comments on all aspects of the supporting information provided in this RFA section.

**List of Subjects in 12 CFR Part 1271**

Accounting, Community development, Credit, Federal home loan banks, Government securities, Housing, Miscellaneous federal home loan bank operations and authorities, Reporting and recordkeeping requirements.

**Authority and Issuance**

Accordingly, for reasons stated in the SUPPLEMENTARY INFORMATION and under the authority of 12 U.S.C. 1431(a), 1432(a), 4511(b), 4513, 4526(a), FHFA proposes to amend part 1271 of subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

## PART 1271—MISCELLANEOUS FEDERAL HOME LOAN BANK OPERATIONS AND AUTHORITIES

■ 1. The authority citation for part 1271 continues to read as follows:

**Authority:** 12 U.S.C. 1430, 1431, 1432, 1441(b)(8), (c), (j), 1442, 4511(b), 4513(a), 4526.

■ 2. Amend § 1271.37 by adding paragraph (d) to read as follows:

**§ 1271.37 Non-administrative expenses; assessments.**

* * * * *

(d)(1) *Final Assessments.* All Financing Corporation assessments collected during 2019 shall be final. Subsequent to March 29, 2019, no insured depository institution shall have any right to receive refunds for any overpayment of any prior Financing Corporation assessments nor shall it be billed for any underpayment of any prior Financing Corporation assessments that arise as a result of an amendment to any Consolidated Reports of Condition and Income on which the prior Financing Corporation assessment had been based.

(2) *Amendments to call reports.* Amendments to an institution's Consolidated Reports of Condition and Income for quarters prior to and including the fourth quarter of 2018 shall not affect an institution's Financing Corporation assessments after March 26, 2019.

(3) *June 2019 Assessment.* In the event Financing Corporation assessments are collected in June 2019, amendments to an institution's first quarter 2019 Consolidated Reports of Condition and Income that are submitted after June 25, 2019 shall not affect the institution's Financing Corporation assessment.

Dated: September 20, 2018.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2018–20975 Filed 9–25–18; 8:45 am]

BILLING CODE 8070–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 21

**[Docket No. FAA–2018–0860]**

## Proposed Primary Category Design Standards; Vertical Aviation Technologies (VAT) Model S–52L Rotorcraft

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** This notice announces the existence of and requests comments on the proposed airworthiness design standards for acceptance of the Vertical Aviation Technologies (VAT) Model S–52L rotorcraft under the regulations for primary category aircraft.

**DATES:** Comments must be received on or before November 26, 2018.

**ADDRESSES:** Send comments to the Federal Aviation Administration, Policy and Innovation Division, Rotorcraft Standards Branch, AIR–681, Attention: Michael Hughlett, 10101 Hillwood Parkway, Fort Worth, Texas 76177. Comments may also be emailed to: *Michael.Hughlett@faa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hughlett, Aviation Safety Engineer, Rotorcraft Standards Branch, Policy and Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone (817) 222–5110; email *Michael.Hughlett@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites interested parties to submit comments on the proposed airworthiness standards to the address specified above. Commenters must identify the VAT Model S–52L on all submitted correspondence. The most helpful comments reference a specific portion of the airworthiness standards, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received on or before the closing date before issuing the final acceptance. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed airworthiness standards based on received comments.

**Background**

The primary category for aircraft was created specifically for the simple, low performance personal aircraft. Section 21.17(f) provides a means for applicants to propose airworthiness standards for their particular primary category aircraft. The FAA procedure establishing appropriate airworthiness standards includes reviewing and possibly revising the applicants' proposal, publication of the submittal in the **Federal Register** for public review and comment, and addressing the comments. After all necessary revisions, the standards are published as approved FAA airworthiness standards.

**Proposed Airworthiness Standards for Acceptance Under the Primary Category**

This document prescribes airworthiness standards for the issuance of a type certificate for the VAT Model S–52L, a primary category rotorcraft, and its engine. The airworthiness standards for this aircraft include a sub-set of regulations for the fuel system that are at amendment levels higher than Amendment 27–0 to provide improved occupant protection.