

(2) If FHFA determines that the Enterprise is otherwise non-compliant with applicable requirements of this part, FHFA may require the Enterprise to submit a plan for achieving compliance with the requirements.

(3) If the Enterprise is required to submit a plan for achieving compliance with applicable requirements of this part, the Enterprise must promptly submit its plan to FHFA for approval, consistently with § 1236.4.

(4) The Enterprise plan must include, as applicable:

(i) An assessment of the Enterprise's liquidity and funding profile, and the reasons for the shortfall;

(ii) The actions that the Enterprise has taken and will take to achieve full compliance with this part, including:

(A) A plan for adjusting the Enterprise's liquidity and funding risk profile, liquidity portfolio, liquidity and funding risk management practices, and funding sources in order to achieve full compliance with this part;

(B) A plan for remediating any operational or management issues that contributed to noncompliance with this part;

(C) A best estimate time frame for achieving full compliance with this part; and

(D) A commitment to report to FHFA daily on Enterprise progress to achieve compliance in accordance with the plan until full compliance with this part is achieved.

(iii) Other considerations or actions as may be required for FHFA approval.

(c) *Supervisory and enforcement actions.* FHFA may, at its sole discretion, take additional supervisory or enforcement actions to address non-compliance with the requirements of this part, including non-compliance with the minimum liquidity requirements or non-compliance with any requirement to submit a liquidity plan acceptable to FHFA.

§ 1241.31 Supervisory determination of temporarily increased liquidity requirements.

(a) *Notice.* Whenever FHFA determines that, due to economic, market, or Enterprise-specific circumstances, temporary modified minimum liquidity requirements above those established under this part are necessary or appropriate for an Enterprise, FHFA will notify the Enterprise in writing of the proposed modified temporarily increased Enterprise liquidity requirements, the timeframe by which the Enterprise is required to achieve and comply with the proposed requirements, and an explanation of why the proposed

modified Enterprise liquidity requirements are considered necessary or appropriate for the Enterprise.

(b) *Response.* (1) The Enterprise may respond in writing to any or all of the matters addressed in the notice. The response may include any information which the Enterprise would like FHFA to consider in determining whether the proposed temporarily increased liquidity requirements should be established for the Enterprise, and the timeframe for compliance with the proposed requirements. Any response from the Enterprise must be submitted in writing to FHFA within 30 days of the Enterprise receipt of the notice. FHFA may shorten the required Enterprise response time, when in the opinion of FHFA, the condition of the Enterprise so requires, provided that the Enterprise is informed promptly of the shortened response time, or with the consent of the Enterprise. In its discretion, FHFA may extend the Enterprise response time.

(2) Failure by the Enterprise to respond within 30 days or such other time period as may be specified by FHFA shall constitute a waiver of any objections to the proposed modified liquidity requirements or the timeframes for compliance.

(c) *Determination.* After the close of the Enterprise response time period, FHFA will determine, based on a review of the Enterprise response and other relevant information, whether the proposed requirements should be established for the Enterprise and, if so, the timeframe in which the requirements will be effective. FHFA will notify the Enterprise of its determination in writing. The determination will be accompanied by an order effectuating the modified liquidity requirements, which shall be temporary and time-limited to address the relevant circumstances. The determination will include a supporting explanation, except for a determination not to establish the proposed requirements.

(d) *Submission of plan.* FHFA's determination may require the Enterprise to develop and submit to FHFA, within a time period specified, an acceptable plan to reach and maintain the modified liquidity requirements.

Subpart E—[Reserved]

Mark A. Calabria,

Director, Federal Housing Finance Agency.

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1242

RIN 2590-AB13

Resolution Planning

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is seeking comment on a proposed rule that would require Fannie Mae and Freddie Mac (the Enterprises) to develop plans to facilitate their rapid and orderly resolution in the event FHFA is appointed receiver. A resolution planning rule is an important part of FHFA's on-going effort to develop a robust prudential regulatory framework for the Enterprises, including capital, liquidity, and stress testing requirements, as well as enhanced oversight, which will be critical to FHFA supervision of the Enterprises after they exit the conservatorships. In addition, a resolution plan as proposed to be required would support FHFA if appointed as receiver to, among other things, minimize disruption in the national housing finance markets by providing for the continued operation of an Enterprise's core business lines by a limited-life regulated entity (LLRE); ensure that investors in mortgage-backed securities guaranteed by the Enterprises and in Enterprise unsecured debt bear losses in accordance with the priority of payments set out in the Safety and Soundness Act while minimizing unnecessary losses and costs to these investors; and, help foster market discipline in part through FHFA publication of "public" sections of Enterprise resolution plans.

DATES: Comments must be received on or before March 9, 2021.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AB13, by any one of the following methods:

- *Agency Website:* <https://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 comment to the Federal eRulemaking Portal, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590-AB13.

• *Hand Delivered/Courier*: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB13, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at 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–AB13, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT:

Ellen S. Bailey, Managing Associate General Counsel, (202) 649–3056, Ellen.Bailey@fhfa.gov; Francisco Medina, Assistant General Counsel, (202) 649–3076, Francisco.Medina@fhfa.gov; Jason Cave, Deputy Director, Division of Resolutions, (202) 649–3027, Jason.Cave@fhfa.gov; or Sam Valverde, Principal Advisor, Division of Resolutions, (202) 649–3732, Sam.Valverde@fhfa.gov. These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

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I. Background; Purpose of and Need for the Rule

A. Business and Supervision of the Enterprises

Enterprise Purpose and Business. Fannie Mae and Freddie Mac are federally chartered housing finance enterprises whose purposes include providing stability to the secondary market for residential mortgages; providing ongoing assistance to the secondary market for residential mortgages (including activities related to mortgages on housing for low- and moderate-income families) by increasing the liquidity of mortgage investments and improving distribution of investment capital available for residential mortgage financing; and, promoting access to mortgage credit throughout the United States, including central cities, rural areas, and underserved areas, by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.¹ To meet these purposes, the Enterprises are

statutorily authorized to engage in limited activities—primarily, the purchase and securitization of eligible mortgage loans—and are directed to use their authority in some ways, such as meeting FHFA-established goals related to housing loans for low- and very low-income families and serving underserved housing markets.² Loans eligible for purchase or securitization by the Enterprises must meet statutory, regulatory, and business eligibility requirements.

Each Enterprise generally organizes its business activity into a single-family business and a multifamily business. The Enterprise business models for supporting single-family and multifamily housing consist primarily of a guarantee business. Mortgage lenders participate in the mortgage-backed securities (MBS) swap and cash window programs, originating loans in accordance with Enterprise standards and either providing those loans to an Enterprise in exchange for securities guaranteed by the Enterprise or selling loans directly to the Enterprise for cash. Among other things, the cash window enables smaller lenders to access the secondary market at competitive rates. In the portfolio business, the Enterprises issue debt and invest the proceeds in whole loans that they hold on their balance sheets rather than securitizing, and in MBS. In the past, the Enterprises have had substantial portfolio businesses. The Enterprises’ ability to hold loans on their balance sheets continues to be important to support the cash window acquisition channel and to hold delinquent loans that have been bought out of pools of loans collateralizing MBS.

In both their portfolio and guarantee businesses, the Enterprises assume credit risk on purchased or securitized loans (in the MBS swap and cash programs, the Enterprise assumes the credit risk in exchange for a guarantee fee). Statutory requirements for loan purchase eligibility reduce credit risk somewhat. For example, the Enterprises may not acquire single-family loans with loan-to-value ratios (LTVs) at the time of purchase in excess of 80 percent without additional credit enhancement, the most common form of which is private mortgage insurance.³ In both their multifamily and single-family businesses, the Enterprises may further reduce the credit risk they assume by engaging in risk management activities such as credit risk transfer (CRT) transactions, where the Enterprises pay a fee to transfer some credit risk to

² See, e.g., *id.* 1454, 1723a, 4561, and 4565.

³ 12 U.S.C. 1454(a)(2) and 1717(b)(2).

¹ 12 U.S.C. 1451 (note) and 1716.

private investors.⁴ Structures of CRT transactions vary.

The Enterprises' mortgage business lines require administration of cashflows derived from payments of principal and interest on underlying mortgage loans. The Enterprises contract with loan servicers (often, sellers of loans to an Enterprise who retain mortgage servicing rights) to administer payments from mortgagors. The Enterprises also jointly own and contract with Common Securitization Solutions, LLC (CSS), which operates a common securitization platform for single-family mortgages and performs certain back-office and administration operations previously conducted by the Enterprises directly (and separately). A common securitization platform also facilitates issuance of a common security, the uniform mortgage-backed security (UMBS), intended to promote liquidity in the secondary mortgage market and eliminate pricing differences between Fannie Mae and Freddie Mac single-family securities. By contrast, each Enterprise securitizes, issues, and administers multifamily MBS for its own account, using distinct collateralization structures.

While there are similarities between the Enterprises' business and that of the Government National Mortgage Association (Ginnie Mae), the Enterprises' guarantee of timely payment of principal and interest to investors is not backed by the full faith and credit of the United States.⁵ The Enterprises are required to state in all of their obligations and securities that such obligations and securities, including the 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 itself.⁶

Nonetheless, because of the Enterprises' federal statutory charters and some federally conferred business privileges,⁷ pricing of Enterprise obligations has reflected investor perception of a full faith and credit guarantee.⁸ Investors may have been relying on this perception when deciding to invest in the Enterprises' debt and MBS at borrowing costs near that of debt issued by the federal government, despite the Enterprises' high leverage. That same perception may encourage typically conservative investors, including foreign sovereigns, to purchase Enterprise obligations and securities. The perception of an implicit guarantee thus undermines market discipline and incentivizes risk taking and growth at the Enterprises.

Enterprise Supervision; Resolution. As regulator and supervisor of the Enterprises, FHFA's duties include ensuring that the Enterprises operate in a safe and sound manner; foster liquid, efficient, competitive, and resilient national housing finance markets; and, operate in a manner that is consistent with the public interest.⁹ In common with other federal financial safety and soundness supervisors, FHFA is authorized to examine the Enterprises and to require regular and special reports from them; to establish capital, liquidity, and other prudential management and operations standards; to require the Enterprises to submit corrective plans and take corrective actions if certain standards are not met; and, to bring enforcement actions against the Enterprises and certain "entity-affiliated" parties.¹⁰

FHFA is also authorized to appoint itself as conservator or receiver of an Enterprise if statutory grounds are met.¹¹ When appointed receiver of an Enterprise, FHFA must establish an LLRE which immediately succeeds to the Enterprise's federal charter and thereafter operates subject to the Enterprise's authorities and duties.¹²

FHFA's authorities as receiver or conservator were modeled on those provided to the Federal Deposit Insurance Corporation (FDIC) through the Federal Deposit Insurance Act, and the concept of an LLRE is derived from an FDIC-established bridge bank.¹³ FDIC resolutions, however, involve insured depository institutions (IDIs) that pay into the FDIC's Deposit Insurance Fund (DIF) and receive, for the benefit of deposit customers, FDIC deposit insurance on deposit amounts up to a certain limit.¹⁴ The FDIC may use the DIF when conducting a resolution and may replenish the DIF through assessments paid by thousands of IDIs.¹⁵ To enable the FDIC "to understand and anticipate the operational, managerial, financial and other aspects of the IDI that would complicate efforts by the FDIC as receiver to . . . determine and maximize franchise value, and conduct a least-cost [resolution]," the FDIC has adopted a regulation requiring larger IDIs to engage in resolution planning.¹⁶

In contrast to FDIC resolutions, there is no fund similar to the DIF available to FHFA when conducting an Enterprise resolution.¹⁷ Because Enterprise obligations and securities are not backed by the full faith and credit of the United States and because there is no DIF-like fund for Enterprise resolution, resolution of an Enterprise by FHFA necessarily would involve only the Enterprise's resources available to absorb losses and satisfy investor and creditor claims—Enterprise assets, capital and capital-like instruments, and contracts that transfer risk of loss to third parties.

B. FHFA Appointment as Conservator for the Enterprises; Actions Necessary to End the Conservatorships

The 2007–2008 financial crisis began with stresses in the "subprime" and "Alt-A" mortgage market and grew to the traditional mortgage market and other financial sectors in the United States and globally.¹⁸ As asset prices fell and other large financial firms failed, it became increasingly difficult for the Enterprises to issue debt to fund their retained portfolios, to raise new capital to cover mark-to-market losses from private label securities the Enterprises

⁴ See <https://www.fhfa.gov/AboutUs/Reports/Pages/Overview-of-Fannie-Mae-and-Freddie-Mac-Credit-Risk-Transfer-Transactions-8212015.aspx>, and other reports at <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Credit-Risk-Transfer.aspx>.

⁵ Compare 12 U.S.C. 1717(a)(2)(A), 1455(h)(2), and 1719(d); see also *id.* 4501(4) and 4503.

⁶ *Id.* 1455(h)(2) and 1719(d). Since September 2008, the Enterprises have been provided explicit, but limited, support by the U.S. Department of the Treasury through Senior Preferred Stock Purchase Agreements (PSPAs) to assure continuing operation of the Enterprises in conservatorships. See <https://www.fhfa.gov/Conservatorship/Pages/Senior-Preferred-Stock-Purchase-Agreements.aspx>. The PSPAs currently remain in place, although they are meant to be temporary, and the PSPA for each Enterprise establishes a limit or cap on the amount of support Treasury will provide, so they are not an exercise of the full faith and credit of the United States. More information on the Enterprise conservatorships and the PSPAs is set forth below in section B, FHFA Appointment as Conservator of the Enterprises; Actions Necessary to End the Conservatorships.

⁷ The Enterprises may be depositories of public money; are exempt from almost all federal, state, and local taxation; and, are not required to be licensed to do business in any state. *Id.* 1452(d) and (e), 1456(a), 1723a(c)(2), and 1723a(a). Enterprise securities are exempt securities within the meaning of laws administered by the Securities and Exchange Commission, and the Secretary of the Treasury may purchase their obligations and may do so with public money. *Id.* 1455(c) and (g), 1719(c) and (e), and 1723c.

⁸ See <https://www.fhfa.gov/PolicyProgramsResearch/Research/Pages/Working-Paper-07-4.aspx>.

⁹ 12 U.S.C. 4513(a)(1)(B).

¹⁰ See generally, *id.* 4513b, 4514, 4517, 4611, 4622, and 4631.

¹¹ *Id.* 4617(a).

¹² *Id.* 4617(i)(1)(A)(ii) and (2)(A).

¹³ Compare, 12 U.S.C. 1821(c) and 4617(b); 1821(n) and 4617(i).

¹⁴ See generally, 12 U.S.C. 1821.

¹⁵ 12 U.S.C. 1817(b) and 1821(a)(4).

¹⁶ 75 FR 27464, 27465 (May 17, 2010); see also 12 CFR 360.10 (2020).

¹⁷ See generally, 12 U.S.C. 1817(b) and 1821(a)(4); compare 12 U.S.C. 1455(c)(2), 1719(c), and 4516(e).

¹⁸ See 83 FR 33312, 33317 (July 17, 2018) (FHFA Notice of proposed rulemaking on Enterprise Capital Requirements, which discusses 2007–2008 financial crisis and the Enterprises).

held, and to build reserves for projected credit losses from their guarantees. In September 2008, when it was apparent that substantial deterioration in the housing market would leave the Enterprises unable to fulfill their statutory purposes and mission without government intervention, FHFA appointed itself conservator of each Enterprise.¹⁹ At the same time, as conservator for each Enterprise, FHFA entered into the Senior Preferred Stock Purchase Agreements (PSPAs) with the U.S. Department of the Treasury (Treasury) to provide each Enterprise financial support up to a specified amount.²⁰ This limited support, which continues to the present, permits the Enterprises to meet their outstanding obligations and continue to provide liquidity to the mortgage markets while maintaining a positive net worth. The Enterprises required a combined \$187 billion dollars in Treasury support from 2008 to 2012. However, Fannie Mae and Freddie Mac have not requested a major draw from the Treasury since 2012.²¹

FHFA appointed itself as conservator of each Enterprise in September 2008, instead of receiver, in part due to concerns about potential market instability that could have resulted from an unprecedented receivership proceeding for which FHFA and the Enterprises had not planned or prepared, which could have been compounded by market perception that all Enterprise debt was backed to some extent by the U.S. government.²² Until July 2008, the Safety and Soundness Act did not provide for Enterprise receivership and there was no process for separating Enterprise operations between functions that were necessary to maintaining the stability of the housing market and those which were not, leaving the regulator and policymakers with limited options. The Enterprise conservatorships have now lasted for over twelve years,

considerably longer than any conservatorship under the auspices of the FDIC or of the Resolution Trust Corporation, established to resolve failed thrifts following the 1989 thrift crisis.²³

FHFA's current Strategic Plan includes the objective of responsibly ending the conservatorships.²⁴ In preparation, FHFA is developing a more robust prudential regulatory framework for the Enterprises, including capital, liquidity, and stress testing requirements, and enhanced supervision. The Treasury *Housing Reform Plan* noted the importance of developing a credible resolution framework for the Enterprises to protect taxpayers, enhance market discipline, and mitigate moral hazard and systemic risk.²⁵ FHFA believes this proposed rule is an important part of developing such a framework and is a key step toward the robust regulatory post-conservatorship framework FHFA is developing. Further, FHFA concurs with Treasury's enumeration of the benefits of a credible resolution framework. The importance of such a framework for the Enterprises is heightened by the historical precedent set by the decision to place each Enterprises in conservatorship instead of receivership. FHFA also notes that additional changes may be warranted, such as requiring each Enterprise to maintain a minimum amount of loss-absorbing capacity in the form of subordinated or convertible debt that could be "bailed in" should the Enterprise encounter significant financial distress, which could facilitate the establishment of a viable LLRE.²⁶ FHFA is considering a separate rulemaking that would require each Enterprise to maintain minimum amounts of long-term debt and other loss-absorbing capacity requirements.

In developing the proposed resolution planning framework, FHFA has considered the resolution planning framework of the FDIC for large IDs and

a framework jointly established by the FDIC and the Federal Reserve Board (FRB) pursuant to section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the DFA section 165 rule), which covers large, interconnected bank holding companies and nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) for enhanced supervision by the FRB. While there would be significant differences among FDIC resolution of an IDI, resolution of a bank holding company in a bankruptcy proceeding, and FHFA resolution of an Enterprise, the FDIC's IDI rule and the DFA section 165 rule provided helpful context for FHFA's consideration of the goals and requirements of an appropriate Enterprise resolution planning framework in view of FHFA's statutory authorities and mandates.²⁷

C. Purpose of and Need for Resolution Planning

Considering the Enterprises' statutory purposes and mission and FHFA's statutory duties and authorities, the goals of Enterprise resolution planning are to facilitate the continuation of Enterprise functions that are essential to maintaining stability in the housing market in the establishment of an LLRE by FHFA as receiver and to allocate losses to creditors in the order of their priority. The Enterprises' combined single-family book of business is in excess of \$5 trillion and the combined multifamily book is approximately \$650 billion. Given the Enterprises' statutory obligation to provide liquidity to the secondary mortgage market, their market dominance in providing such liquidity, and the potentially significant impact financial stress in the secondary mortgage market could have on the national housing finance markets, financial stability, and the broader economy,²⁸ transferring Enterprise assets and liabilities to and continuing functions in an LLRE requires careful consideration and tailoring to the specific function of the Enterprises, despite the Enterprises' limited business lines (relative to other large and complex financial institutions) and simple corporate structures.

To facilitate FHFA's role as receiver, the proposed rule would establish a

¹⁹ See <https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B-Lockhart-at-News-Conference-Announcing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx>.

²⁰ See *supra*, fn 6.

²¹ Due to corporate tax law changes in 2017 that resulted in write-downs to the value of deferred tax assets, Fannie Mae received a \$3.7 billion dollar draw from Treasury in 2018. This was a one-time accounting event.

²² See <https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B-Lockhart-at-News-Conference-Announcing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx>; <https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-OFHEO-Director-James-B-Lockhart-in-Support-of-Secretary-Paulson,-Administration-and-the-Federal-Reserve-in-T.aspx>; and, <https://www.treasury.gov/press-center/press-releases/pages/hp1129.aspx>.

²³ By comparison, the RTC closed 706 failed thrift institution conservatorships from its establishment in 1989 through June 1995. See FDIC, *Managing the Crisis: The FDIC and RTC Experience, 1980–1994* (1998), vol. 1, 27.

²⁴ See https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_StrategicPlan_2021-2024_Final.pdf.

²⁵ See U.S. Department of the Treasury, *Housing Reform Plan* (September, 2019), available at <https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf>.

²⁶ To facilitate a credible resolution planning framework, the *Housing Reform Plan* recommends requiring each Enterprise to maintain a minimum amount of total loss-absorbing capacity that could be bailed-in in the event of financial distress. *Id.* Such a requirement is beyond the scope of the current proposal.

²⁷ In this notice of proposed rulemaking, FHFA refers to the DFA section 165 rule as applying to bank holding companies, rather than that rule's "Covered Companies," for ease of reading and because currently there are no FSOC-designated nonbank financial companies.

²⁸ See <https://home.treasury.gov/system/files/261/Financial-Stability-Oversight-Councils-Statement-on-Secondary-Mortgage-Market-Activities.pdf>.

multi-faceted, iterative Enterprise resolution planning process that provides FHFA an Enterprise resolution plan containing (i) key information about an Enterprise's structure, governance, operations, business practices, financial responsibilities, and risk exposures and (ii) advance strategic thinking and analysis, including the identification of impediments to "rapid and orderly" resolution as well as actions that could facilitate resolution if taken before receivership or in establishing the LLRE. The proposed resolution planning process also includes Enterprise development and maintenance of resolution-related capabilities to be assessed or verified periodically by FHFA that could generate, on a timely basis, critical information (e.g., identification of key personnel) that FHFA would need as receiver to fulfill its statutory duties. Together, these components would help inform the immediate establishment of the LLRE to continue Enterprise business functions, including an informed division of assets and liabilities between the Enterprise receivership estate and a newly established LLRE.

Advance information, strategic analysis, and action, where appropriate, would also support other important goals of a rapid and orderly Enterprise resolution—to minimize disruption in the national housing finance markets, preserve Enterprise franchise and asset value, and ensure creditors bear losses in the order of their priority.²⁹ These goals work in concert, since a disruption of national housing finance markets also could increase costs to FHFA as receiver to the detriment of claimants on an Enterprise's receivership estate.

As well, the proposed rule would support transparency in the Enterprises' resolution planning process by requiring each Enterprise resolution plan to include a "public section" that FHFA would publish. FHFA may publish its own high-level assessment of Enterprise resolution plans as the planning process matures. FHFA believes that such transparency would further another important policy goal—fostering market discipline. Despite statutory provisions clarifying that neither the Enterprises themselves nor their securities or obligations are backed by the United States, investors, creditors and others doing business with the Enterprises may perceive that the Enterprises have implicit United States government

support. Financial support from the Treasury Department provided through the PSPAs, which continues today, could encourage that perception. To clarify the status of the Enterprises as privately owned corporations, FHFA seeks to make explicit in this resolution planning rule that no extraordinary government support will be available to prevent an Enterprise receivership, indemnify investors against losses, or fund the resolution of an Enterprise. Each Enterprise must incorporate that assumption into its resolution plan, and this assumption must be apparent in the plan's public section.

II. The Proposed Rule

A. Overview of the Resolution Planning Framework

"Rapid and orderly resolution" of an Enterprise. The proposed rule would establish the procedural and substantive requirements for Enterprise resolution plans developed to facilitate their rapid and orderly resolution by FHFA as receiver. The term "rapid and orderly resolution" is used in the DFA section 165 and its implementing rule.³⁰ FHFA has carefully considered whether an Enterprise resolution planning rule should include a similar standard.

A similar standard, reflecting FHFA's authorities as receiver and the Enterprises' statutory authorities and obligations, would help the Enterprises, market participants, and the public understand that the proposed rule seeks to achieve a similar, but appropriately tailored, goal—resolution, if necessary, of a large financial intermediary that performs functions other market participants rely on for their efficient operation, and which would be difficult to transfer or for which there are not available substitutes. FHFA views an Enterprise resolution planning rule as similar to the DFA section 165 rule, one purpose of which is to promote U.S. financial stability, and to efforts of other U.S. financial safety and soundness supervisors to align with common goals of the Financial Stability Board, such as improving "the capacity of national authorities to implement orderly

resolutions of large and interconnected financial firms."³¹

FHFA recognizes, however, that statutory provisions creating the Enterprises and authorizing their resolution by FHFA answer some questions that are not determined in advance for other receivers or administrators in bankruptcy—the Safety and Soundness Act directs that the Enterprises' functions as set forth in their charter acts will continue and establishes the framework for the continuation of these functions in a successor LLRE. FHFA's approach to "rapid and orderly resolution" is necessarily formed against that statutory backdrop.³²

For the foregoing reasons, FHFA proposes to establish "rapid and orderly resolution" as a standard for Enterprise resolution, but to define it in a manner tailored to resolution of an Enterprise contemplated by the Safety and Soundness Act. Thus, FHFA proposes to define "rapid and orderly resolution" as a process for establishing an LLRE as successor to an Enterprise, including transferring Enterprise assets and liabilities to the LLRE, such that succession by LLRE "can be accomplished within a reasonable amount of time and in a manner that substantially mitigates the risk that the failure of the Enterprise would have serious adverse effects on national housing finance markets." FHFA requests comment on the use of "rapid and orderly resolution," as defined in the proposed rule, as the standard for an Enterprise resolution.

Procedural overview of the proposed Enterprise resolution planning framework. Procedurally, development of an Enterprise resolution plan would begin with the identification of Enterprise "core business lines." Core business lines and the operations, services, functions, and supports associated with core business lines are important focal points of resolution planning, as FHFA expects "core" Enterprise business lines would be conducted in an LLRE established to continue the business operations of an Enterprise in receivership.

After core business lines and associated operations, services, functions, and supports are identified, each Enterprise would be required to develop and submit to FHFA a resolution plan that provides strategic analysis and information to facilitate

³⁰ 12 CFR 243.2; see also 12 U.S.C. 5365(d)(1), requiring certain bank holding companies to report to the FRB on their plans "for rapid and orderly resolution." The DFA section 165 rule defines "rapid and orderly resolution" as "a reorganization or liquidation of the [bank holding] company . . . that can be accomplished within a reasonable period of time in a manner that substantially mitigates the risk that the failure of the [bank holding] company would have serious adverse effects on [the] financial stability of the United States."

²⁹ Advance action could include, for example, ensuring that certain arrangements (master netting agreements related to qualified financial contracts, for example) are resilient to the creation of and transfer of assets to an LLRE.

³¹ 75 FR 27464, 27466 (May 17, 2010). In general, FDIC **Federal Register** notices on its IDI rule provide high level background on U.S. participation in international efforts toward resolution of large, interconnected financial firms.

³² See generally, 12 U.S.C. 4617(i).

FHFA's rapid and orderly resolution of the Enterprise in a receivership, including setting forth actions that an Enterprise would take to improve its resolvability and identified impediments to resolvability that may be beyond the Enterprise's ability to address or control.

FHFA would review a received and complete resolution plan and provide notice to the Enterprise identifying deficiencies in its resolution plan, if any, as well as actions or changes set forth by the Enterprise in its resolution plan that FHFA agrees could facilitate a rapid and orderly resolution. FHFA may also provide other feedback, such as on the timing of actions or changes to be undertaken by the Enterprise. An Enterprise receiving a notice of deficiency would be required to submit a revised resolution plan that corrects the deficiency, or addresses what actions will be taken to correct it.

The resolution planning process proposed is an iterative one, involving episodic and periodic reviews (and updates as appropriate) of business lines, and periodic development of revised resolution plans. FHFA would employ its examination authority to assess Enterprise compliance with any final rule on resolution planning and, importantly, to assess or verify Enterprise capabilities that would be critical to facilitate resolution by FHFA, including timely production of accurate information from management information systems. The proposed rule is discussed in greater detail below.

B. Identification of Core Business Lines and Associated Operations and Services

Proposed definition of "core" business line; FHFA considerations on scope. The resolution planning process begins with identification of Enterprise core business lines and associated operations and services. Because the statutory outcome of Enterprise resolution is establishment of an LLRE that succeeds to the charter of the Enterprise and continues its operations on the same statutory basis as the Enterprise, FHFA proposes to define a "core business line" as each business line of the Enterprise that plausibly would continue to operate in an LLRE, considering the purposes, mission, and authorized activities of the Enterprise set forth in its authorizing statute and the Safety and Soundness Act.³³ "Core

business line" would include operations, services, functions, and supports associated with the business line and necessary for the business line's continuation in the LLRE.

As an example of how the proposed "core business line" definition could operate, application of the concept may result in identification of two core business lines for each Enterprise, a single-family business line and a multifamily business line. Within the single-family business line, associated operations, services, functions, and supports may include purchasing single-family mortgage loans for cash as well as related operations such as loan servicing, credit enhancement, securitization support, information technology support and operations, and essential human resources and personnel support. When identifying associated operations, services, functions, and supports, an Enterprise should consider those functions that it performs directly and those that are performed by an affiliate or provided by a third party, including third parties whose direct relationship is with the borrower, but whose function may benefit an Enterprise (such as the provider of borrower loan-level mortgage insurance).

FHFA notes that the FDIC IDI and DFA section 165 resolution planning rules also require IDIs and bank holding companies, respectively, to identify "core business lines" but define such business lines as those whose failure, in the view of the institution or company, would result in material loss of revenue, profit, or franchise value. FHFA understands such concepts, in the context of those rules, to frame core business lines as those whose value the receiver should prioritize preserving in resolution or for which the receiver may obtain a higher price or find a ready market should such a business line be sold in a resolution. FHFA's proposed definition of "core business line" is different from the definition in the IDI and DFA section 165 resolution planning rules, considering that the Safety and Soundness Act requires FHFA to establish an LLRE for, and the LLRE to succeed to the charter of, an Enterprise in receivership. Consequently, FHFA believes it appropriate for an Enterprise resolution planning rule to focus on continuation of core business lines in an LLRE, and sees less need for the identification of Enterprise core business lines to consider the impact of failure on revenue, profit, or franchise value.

rulemaking, FHFA may use the terms "authorizing statute" and "charter act" interchangeably.

FHFA requests comment on whether the proposed definition of "core business line" should be expanded to include consideration of the impact of failure (e.g., whether the definition of "core business line" should be revised to state "each business line of the Enterprise whose failure would result in a material loss of revenue, profit, or franchise value or would impair the Enterprise's ability to fulfill its purposes, mission, or obligations under in its authorizing statute and the Safety and Soundness Act.").

FHFA believes that the scope of the proposed "core business line" definition, when considering the Enterprises' statutory purposes and missions and relatively simple corporate structures, makes it unnecessary for an Enterprise resolution planning rule to require identification of "critical operations" (which bank holding companies subject to the DFA section 165 rule must identify) or of "critical services" (which IDIs subject to the FDIC IDI rule must identify). Enterprise resolution planning is a process distinct from the identification of operations, services, functions, and supports associated with an Enterprise core business line. Likewise, FHFA does not believe it would be necessary to define the terms "critical operations" or "critical services," in an Enterprise resolution planning rule, for reasons set forth below.

In the DFA section 165 rule, "critical operations" is defined as "those operations of the [bank holding] company, including associated services, functions and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States."³⁴ Unlike any bank holding company, each Enterprise was created by statute to perform limited functions in support of a particular market.

In that light, for purposes of resolution planning, it would be difficult for FHFA to conclude that a business line integral to an Enterprise's statutory purposes and mission could be discontinued without threatening the stability of the secondary mortgage market or another market an Enterprise is required to serve; each Enterprise's appropriate functions, as carried out through its core business lines, are in service to its purposes and mission.³⁵ In other words, if "critical operations" understood with regard to the

³³ As defined in the Safety and Soundness Act, an Enterprise's "authorizing statute" is its charter act (the Federal National Mortgage Association Charter Act for Fannie Mae, and the Federal Mortgage Loan Corporation Act for Freddie Mac). See 12 U.S.C. 4502(3). In this notice of proposed

³⁴ 12 CFR 243.2.

³⁵ *Supra*, fn 1. FHFA also notes that discontinuation of mission-related functions could be disruptive to other markets, such as markets that are underserved.

Enterprises as operations that, if not performed, could cause disruption or instability in the secondary market for residential mortgages, FHFA expects there would be alignment between the Enterprises' core business lines with their statutory purposes and mission, such that all core business lines would be considered critical operations.

As for "critical services," the FDIC IDI rule defines these as services and operations of the IDI that are necessary to continue its day-to-day operations, such as servicing, information technology support and operations, and human resources and personnel.³⁶ When proposing its IDI rule, FDIC explained that "[k]ey decisions affecting the IDI, and key services or functions relating to the IDI, are often made . . . by parent holding companies or affiliates of the IDI,"³⁷ that "reliance upon affiliates to provide critical services can establish an impediment to transferring its assets, liabilities and operations to an acquiring institution or bridge bank,"³⁸ and that one purpose of the resolution planning rule was for IDIs to "demonstrat[e] how [they] could be separated from their affiliate structure and wound down in an orderly and timely manner in the event of receivership."³⁹ FHFA agrees that identification of critical services is important (particularly so if services are being provided by an affiliate within a holding company, possibly without an arms-length contract), but believes that such services already would be covered by the proposed definition of "core business lines" that includes operations, services, functions, and supports associated with the business line and necessary for its continuation.

FHFA invites comment on its view that there would be sufficient alignment between the definition of core business lines (those businesses line of the Enterprise that plausibly would continue to operate in an LLRE, considering the purposes, mission, and authorized activities of the Enterprise) and the concept of "critical operations" (operations that, if not performed, could cause disruption or instability in the secondary market for residential mortgages) such that an Enterprise resolution planning rule would not need a separate process for identification of "critical operations." Also, FHFA requests comment on the conclusion that a definition of "core business line" that includes operations, services, functions, and supports associated with

the business line and necessary for it to continue would capture the concept of "critical services" (services and operations of the Enterprise that would be necessary to continue its day-to-day operations), such that an Enterprise resolution planning rule would not need to separately identify those associated operations and services that are "critical."

Process for identifying core business lines; methodology. Procedurally, FHFA proposes to require each Enterprise to review its business lines and provide FHFA notice of those business lines preliminarily determined to be core, subject to FHFA review. On review, FHFA may approve or disapprove of any business line identified by an Enterprise as core (or of any operation, service, function, or support associated with any business line) and may independently identify any other business line as core. Following its review, and generally within three months of receiving an Enterprise's preliminary identification, FHFA will provide each Enterprise a notice of its core business lines for purposes of that Enterprise's resolution planning. Notice by FHFA may not include all associated operations, services, functions, and supports, as these aspects of a core business line could vary by Enterprise and would be better identified by the Enterprise, considering its experience operating that particular business line.

The proposed rule would permit FHFA to provide an Enterprise notice of identification of a core business line at any time at FHFA's initiative. To give an Enterprise time to incorporate any core business line newly identified by FHFA into its resolution planning, the Enterprise would not be required to incorporate a core business line identified by FHFA in its next required resolution plan, if that plan is required to be submitted within six months after the date the Enterprise receives notice of identification from FHFA.

The proposed approach to identification is intended to ensure that both the Enterprises and FHFA separately consider the Enterprises' statutory purposes, mission, and authorities when identifying core business lines, bringing both business and supervisory expertise and perspective to bear on identification. The proposed approach leverages each Enterprise's responsibility to meet the purposes of its statutory charter and its understanding of its own business operations, while recognizing FHFA's statutory duties as supervisor to ensure that each Enterprise complies with its charter act and operates in the public interest and FHFA's obligation as

receiver to ensure that an LLRE is constituted in a manner to operate in accordance with the charter of the Enterprise for which it is successor.

To identify its core business lines, each Enterprise would be required to develop and implement an identification process, including a methodology to evaluate the Enterprise's participation in activities and markets that are critical to fostering liquidity, efficiency, resilience, stability, and competition in the national housing finance markets or carrying out the statutory mission and purpose of the Enterprise. That methodology should take into account the markets and activities in which the Enterprise participates; the significance of those markets and activities with respect to the national housing finance markets or the Enterprise's fulfillment of its statutory mission and purpose; and, the significance of the Enterprise as a provider or other participant in those markets and activities. An Enterprise's process for identifying its core business lines could incorporate, for example, review and assessment of business activities toward meeting its statutory duty to serve and its statutory affordable housing goals.⁴⁰

FHFA would not be required to utilize any particular methodology for identifying any core business line but believes that it would be appropriate to consider the factors set forth above in the methodology for Enterprise identification. FHFA would be able to consider any other factor it deemed appropriate.

Because FHFA proposes to require the Enterprises periodically to review their business lines to ensure that identification of core business lines is up-to-date, the proposed rule would require each Enterprise periodically to review its identification process and to revise it as necessary to ensure its continued effectiveness. Additional information regarding periodic reviews is set forth below.

Timing of initial and subsequent Enterprise identifications of core business lines. FHFA proposes to require each Enterprise to provide its initial notice preliminarily identifying core business lines to FHFA within three months after the effective date of a final rule, and requests comment on whether three months is sufficient time for such identification, considering that identification necessarily involves establishing and implementing the methodology described above to assess business lines and their associated operations, services, functions, and

³⁶ 12 CFR 360.10(b)(5).

³⁷ 75 FR 27464, 27465 (May 17, 2010).

³⁸ *Id.*, at 27467.

³⁹ *Id.*, at 27464.

⁴⁰ See generally, 12 U.S.C. 4561 and 4565.

supports. Because identification of core business lines is only the first step in a resolution planning process, by proposing a relatively short period from the effective date of a final rule to the submission date of an initial identification notice, FHFA seeks to balance the Enterprises' need for sufficient time to develop and implement a meaningful identification process with FHFA's need for the Enterprises to develop and submit initial resolution plans that consider those core business lines, within a reasonable period of time after the effective date of a final rule. For the same reason—the desire for the Enterprises to complete initial resolution plans within a reasonable time after the effective date of a final rule—FHFA expects that it would view an Enterprise's initial identification process as sufficient if it reflects thoughtful consideration and application of a methodology consistent with a final rule, even if improvements to the Enterprise's identification process are warranted and would be undertaken as part of any subsequent identification activities.

Following its initial preliminary identification of core business lines, each Enterprise would be expected to review its business lines periodically, in accordance with the methodology set forth in the proposed rule, and to do so sufficiently in advance of its next resolution plan submission that the Enterprise could complete the notice-and-review process for FHFA identification of any new core business lines and also submit information required to be in the resolution plan for each core business line. Up-to-date identification of core business lines and associated operations, services, functions, and supports is critical for Enterprise resolution planning and to the development of a credible resolution plan.

In line with the proposed definition of “core business line,” in the period from submission of one resolution plan to the next, business lines identified as core may not change. To avoid unnecessary burden on the Enterprises and FHFA which may result if, out of an abundance of caution, an Enterprise conducts more frequent identification processes than necessary, FHFA also proposes to reserve authority to direct the Enterprises as to the timeframe for conducting any subsequent periodic identification process. Such direction would address only the timing of a periodic identification process and would not, for example, relieve an Enterprise of the need to review its business lines if it experienced a

“material change,” as addressed below. By reserving authority to direct the timing of periodic identification processes, FHFA seeks to balance the need for up-to-date information about core business lines with the burden of conducting a periodic process, if it becomes apparent that identified core business lines are not changing over the course of several resolution plan submissions.

Change to identification as a core business line, including FHFA reconsideration. FHFA recognizes that there may be different views on whether a business line is core, for purposes of resolution planning, and that business lines may evolve over time, such that a business line once identified as core may cease to be a core business line. Three elements of the proposed rule address possible changes in identification of a core business line.

First, an Enterprise may identify new core business lines when conducting its periodic identification process. Such identification would be a “material change,” which FHFA proposes to define as a change, event, or occurrence that could reasonably be foreseen to have a material effect on the resolvability of the Enterprise, the Enterprise's resolution strategy, or how the Enterprise's resolution plan may be implemented. That “material change” would be an “extraordinary event,” described in the proposed rule as “any material change, merger, reorganization, sale or divestiture of a business unit or material assets, or similar transaction, or any fundamental change to the Enterprise's resolution strategy.” Such a “material change” would thus trigger an Enterprise notice to FHFA within 45 days after the occurrence of the change (the new identification). Relatedly, an “extraordinary event” could occur that gives rise to identification of a new core business line outside of an Enterprise's periodic identification process. In that instance as well, notice to FHFA would be required within 45 days of the identification of the new core business line. Finally, because the definition of “core business line” includes associated operations, services, functions, or supports, a notice of material change would also be required when there is a material change to such operations, services, functions, or supports that could affect the Enterprise's resolution plan.

The proposed rule would also provide a process for FHFA reconsideration of identification of a core business line. Only FHFA may remove the identification of a core business line (including removing the identification of any associated operation, service,

function, or support), and it may do so on its own initiative, at any time, upon notice to an Enterprise. An Enterprise would be permitted to initiate a reconsideration, by submitting a written request to FHFA that includes arguments and other material information that the Enterprise believes would be relevant to that reconsideration. The proposed rule would provide FHFA three months to respond to a reconsideration request, unless FHFA extended that review period. If the Enterprise requests FHFA to reconsider a core business line that FHFA has previously reconsidered, pursuant to an earlier Enterprise request, the written request should describe the material differences between the current request and the most recent prior request. The proposed rule does not set forth a process for discussion or negotiation with an Enterprise about reconsideration, but FHFA anticipates that it would engage with an Enterprise as part of an established supervisory process to understand any different views on the nature of a particular business line.

Finally, FHFA recognizes that a resolution plan is necessarily developed at a point in time, while business activities are fluid through time. For that reason, a notice removing identification as a core business line may include an effective date or other delaying conditions or triggers (such as, for example, sufficient decrease in volume of a core business line, after which it would not be necessary to consider that business line in the Enterprise's resolution planning process).

FHFA invites comment on all aspects of the proposed processes for identifying core business lines and changing a core business line identification. FHFA invites comment on a process element that it has not proposed but is considering—whether, due to similarities between the activities each Enterprise is authorized or directed to take in its charter, there would be benefit to FHFA's providing notice to each Enterprise of all core business lines identified or any removal of a core business line identification, across both Enterprises. In contrast to bank holding companies subject to the DFA section 165 rule, where there presumably would not be common core business lines and critical operations across companies, there exist greater possibilities of common core business lines across the Enterprises. This is apparent if core business lines are identified primarily based on the Enterprise charter acts. FHFA believes that there could be alignment of core business lines across

the Enterprises when considering their current businesses and the proposed Enterprise methodology for determining core business lines. One possible benefit of core business line identification across the Enterprises is that there would be a process to assure that each Enterprise's resolution planning and plan addresses the same core business lines. At the same time, in the unlikely event the Enterprises' core business lines did not align based on their individual application of the proposed rule's identification methodology, each Enterprise could be required to address business lines that are not, in fact, core as to that Enterprise in its resolution planning.

C. Content and Form of an Enterprise Resolution Plan

After identifying its core business lines, the proposed rule would require an Enterprise to develop a resolution plan. Each resolution plan would contain strategic analysis and information important to understanding an Enterprise's core business lines and facilitating their continuation, possibly with appropriate changes, in an LLRE established by FHFA as receiver.

Under the proposed rule, a resolution plan would be required to include both strategic analysis and information components, including a description of the Enterprise's corporate governance structure for resolution planning; how the LLRE will be funded throughout its existence and be well capitalized within the timeline provided by statute; information regarding the Enterprise's overall organizational structure; information regarding the Enterprise's management information systems; a description of interconnections and interdependencies among the Enterprise's core business lines, including with CSS and other third-party providers; and, a clear identification of any potential impediments to the strategies developed and Enterprise plans for addressing such obstacles where practicable. An executive summary would also be required. In proposing these components, FHFA reviewed both the FDIC IDI resolution planning rule and the DFA section 165 rule and has incorporated concepts from each framework, and tailored those concepts to reflect Enterprise and FHFA authorities and duties.

Required and prohibited assumptions. Similar to the DFA section 165 rule, FHFA is proposing to establish required and prohibited assumptions which must underpin an Enterprise's resolution plan. An Enterprise would be required to consider that resolution may occur

under the severely adverse economic conditions provided to the Enterprise by FHFA in conjunction with any stress testing required pursuant to FHFA's rule on stress testing of the regulated entities, 12 CFR part 1238. On occasion FHFA may identify or provide other stress scenarios, possibly more idiosyncratic to an Enterprise, which the Enterprises would be required to consider in preparing the next periodic resolution plan.

Importantly, each Enterprise would be prohibited from assuming that any extraordinary support from the United States government would be continued or provided to the Enterprise to prevent either its becoming in danger of default or in default, including support obtained or negotiated on behalf of the Enterprise by FHFA in its capacity as regulator, conservator, or receiver of the Enterprise through the PSPAs with the Treasury Department. Likewise, each Enterprise's resolution plan would be required to reflect statutory provisions that the Enterprise's "obligations and securities, 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]." ⁴¹ The proposed rule seeks to ensure that resolution plans accurately reflect the statutory construct of the Enterprises—they are not supported by the full faith and credit of the United States and their securities (including securities that an Enterprise guarantees) and debt are not guaranteed by the United States.

Strategic analysis. Similar to the DFA section 165 rule, FHFA proposes to require a strategic analysis describing the Enterprise's plan to facilitate its rapid and orderly resolution. As a practical matter, there may be two components to this analysis—those strategies and actions that are feasible for an Enterprise to implement or take prior to receivership, and those strategies and actions that the Enterprise believes FHFA could take in conjunction with receivership and resolution. By statute, moving to receivership is solely FHFA's authority, and the proposed rule makes clear that FHFA is not bound by any resolution plan of an Enterprise. Nonetheless, each Enterprise understands its business operations in greater detail than does FHFA. An Enterprise's assessment of how the value of its assets and franchise could be preserved, how assets and liabilities could be divided between the LLRE and a receivership estate, and how losses and costs could be minimized,

would be important considerations for FHFA. These actions are the basis for a resolution and receivership that minimize disruption in the national housing finance markets. They will be particularly important given that the Enterprises are not supported by the United States government, and FHFA does not have access to funding for resolution, such as the DIF.

Each Enterprise's strategic analysis should therefore detail how, in practice, the Enterprise could be resolved through FHFA's receivership authority by liquidating assets or by transferring them to an LLRE, which would continue to operate the Enterprise's core business lines. The strategic analysis should include the analytical support for the resolution plan and its key assumptions, including any assumptions made concerning the economic or financial conditions that would be present at the time a plan is implemented.

An important element proposed in the strategic analysis is the Enterprise's description of actions or a range of actions that the Enterprise could take to facilitate its rapid and orderly resolution, including with respect to its core business lines, in the event of its becoming in danger of default or in default. For example, an Enterprise could review service level agreements to assess likelihood of service continuation after transfer to an LLRE, including whether contracts have "resolution-favorable" terms. The Enterprise should specify those actions that it plans to take and set forth the time period the Enterprise expects would be needed to successfully execute each such action. The Enterprise should also describe any impediments to actions that could be taken, including impediments to actions that it plans to take.

The strategic analysis should identify and address funding, liquidity, support functions, and other resources, mapped to the Enterprise's core business lines. This element would require the Enterprise to identify the amount of capital and capital-like instruments (such as subordinated debt, convertible debt, other contingent capital, mortgage insurance, and CRT transactions) available to absorb losses before imposing losses on creditors or investors and, where applicable, map this loss absorbing capacity to associated assets. The Enterprise's strategy for maintaining and funding its core business lines in an environment when it faces becoming in danger of default or in default should be provided and mapped to its core business lines, and its strategic analysis should demonstrate how such resources would be utilized to facilitate an orderly

⁴¹ 12 U.S.C. 1455(h)(2) and 1719(d).

resolution. The Enterprise's strategic analysis also should consider the capital support that will be needed by an LLRE (during its life and when its status as a "limited-life" regulated entity ends) to maintain market confidence.

The strategic analysis should set forth the Enterprise's strategy in the event of a failure or discontinuation of a core business line, including an associated operation, service, function, or support that is critical to a core business line and the actions that could be taken to prevent or mitigate any adverse effects of such failure or discontinuation on the national housing finance markets. This would include, if appropriate, the Enterprise's strategy for continuing an associated operation, service, function or support provided by an affiliate or the third-party provider that has failed. The ability of each affiliate or third party providing operations, services, functions or supports to function during the Enterprise's resolution should be assessed.

The strategic analysis should describe how and the extent to which claims against the Enterprise by the Enterprise's creditors and counterparties would be satisfied in accordance with FHFA's rule setting forth the priority of expenses and unsecured claims set forth at 12 CFR 1237.9, consistent with continuation of the Enterprise's core business lines by an LLRE. Another element to be included in a strategic analysis is the Enterprise's strategy for transferring or unwinding qualified financial contracts, consistent with applicable statutory requirements.⁴²

It is likely that each Enterprise will identify potential material weaknesses or impediments to rapid and orderly resolution as conceived in its plan. The Enterprise's strategic analysis must identify and describe those weaknesses or impediments, and any actions or steps the Enterprise has taken or proposes to take to address them. There may be overlap between these planned actions and other planned actions included in the strategic analysis. The Enterprise should identify actions or steps that other market participants could take to address the identified weaknesses or impediments. The Enterprise would be required to include a timeline for such remedial or other mitigating actions that are under its control.

Finally, FHFA proposes that each Enterprise describe in its strategic analysis the processes the Enterprise employs to determine the current

market values and marketability of its core business lines and material asset holdings, as well as to assess 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. The strategic analysis would include impact of such actions on the value, funding, and operations of the Enterprise and its core business lines.

Description of corporate governance related to resolution planning. The proposed rule would require each Enterprise's resolution plan to include information on its corporate governance structure related to resolution planning. Each Enterprise would be required to describe how resolution planning is integrated into its corporate governance structure and processes; the Enterprise's methodology and process for identifying core business lines; Enterprise policies, procedures, and internal controls governing preparation and approval of its resolution plan; and, 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. Each Enterprise resolution plan would include the name and position of the senior management official primarily responsible for overseeing those functions and for compliance with a final resolution planning rule. The Enterprise's strategic analysis should address 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 and the senior management officials responsible for making those determinations and undertaking those actions.

Each resolution plan would be required to describe any contingency planning or other similar exercise that the Enterprise has conducted since submitting its prior resolution plan to assess the viability of or improve its resolution plan. The proposed rule would require each Enterprise to identify and describe the relevant risk measures it uses 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.

Organizational structure, interconnections, and related information. Under the proposed rule, each Enterprise's resolution plan would include information regarding the

Enterprise's organizational structure, including a list of all affiliates and trusts, the percentage of voting and nonvoting equity of each listed legal entity, and the location, jurisdiction of incorporation, licensing, and key management associate with each material legal entity identified. Where information required to be provided about a legal entity is identical across multiple legal entities, that information may be presented as applicable to a group of identified legal entities.

In its resolution plan, each Enterprise would be required to provide information about interconnections, mapping the operations, services, functions, and supports associated with each of its core business lines. Mapping should identify 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. Mapping should identify liabilities related to such operations, services, and core business lines. Such mapping should show the interconnections between core business lines to be transferred to the LLRE and any operations anticipated to be left in the receivership estate.

Enterprise resolution plans would be required to include an unconsolidated balance sheet for the Enterprise and a consolidating schedule for all material entities that are subject to consolidation by the Enterprise. Each Enterprise would be required to describe the material components of its liabilities, mapped to core business lines, identifying types and amounts of short-term and long-term liabilities, secured and unsecured liabilities, and subordinated liabilities, as well as processes used by the Enterprise to determine to whom collateral has been pledged collateral, the identity of the entity (or person) that holds such collateral, and the jurisdiction where collateral is located and the jurisdiction in which the security interest in collateral is enforceable against the Enterprise, if different from the location. Information on material off-balance sheet exposures, practices related to the booking of trading and derivatives activities, and hedges would be required and a description of the process undertaken by the Enterprise to establish exposure limits.

Each Enterprise would be required to include information about third-party providers with which the Enterprise has significant business connections, including descriptions of the business connection (such as the operation, service, function, or support associated

⁴² "Qualified financial contracts" are defined and the requirements for their transfer or unwinding are set forth at 12 U.S.C. 4617(d)(8) through (11).

with a core business line that the third-party provider performs or provides), the criticality of the connection, the resilience of the connection, and provisions or actions needed to ensure the continued availability of the operation, service, function, or support through the receivership process. For example, the securitization platform provided by CSS is a critical operation for the securitization of single-family mortgages for which there is no substitute. An Enterprise's resolution plan should therefore include provisions for ensuring the continued viability of the common securitization platform, such as prepositioning of working capital. Alternatively, where substitution among providers is feasible, provisions and procedures for affecting such substitutions in the wake of FHFA's appointment as receiver should be noted or developed.

The Enterprises would be required to report on their credit risk exposures to counterparties identified in the proposed rule, including significant sellers of mortgage loans to an Enterprise, significant servicers, and providers of loan-level mortgage insurance. Enterprise resolution plans would be required to analyze whether the failure of a third-party provider would likely have an adverse impact on the Enterprise or likely result in the Enterprise becoming in danger of default or in default. Finally, each Enterprise would be required to identify trading, payment, clearing, and settlement systems of which the Enterprise, directly or indirectly, is a member and on which the Enterprise conducts a material number or material value amount of trades and transactions.

Certain proposed provisions on organizational structure, interconnections, and related information to be included in an Enterprise resolution plan use the term "third-party provider." FHFA has not proposed a definition of that term. When considering the concept of a "third-party provider" in the context of the proposed rule's provisions that use it, FHFA concluded that third-party providers would be identified through application of those rule provisions, such as provisions that would require each Enterprise to identify the entity performing or providing operations, services, functions, or supports associated with core business lines. In that context, where an appropriate rule definition of "third-party providers" would likely refer to aspects of the rule which, when applied, would result in their identification, FHFA considered that a rule definition of "third-party provider" would not add to the

understanding of the rule. FHFA was concerned that a rule definition of "third-party provider" could inadvertently limit application of rule provisions that are intended to be broadly applied. Finally, FHFA notes that the DFA section 165 rule uses the term "major counterparty," which that rule does not define, to somewhat similar effect as "third-party provider" in FHFA's proposed rule. FHFA chose the term "third-party provider" in this instance to avoid implying that a contractual relationship, financial or otherwise, was required. Notwithstanding these considerations, FHFA requests comment on whether a definition of "third-party provider" should be included in any final rule.

Management information systems. FHFA proposes to require each Enterprise to provide information in its resolution plan about the key management information systems and applications supporting its core business lines, including systems and applications for risk management, automated underwriting, valuation, accounting, and financial and regulatory reporting, and systems and applications containing records used to manage all qualified financial contracts. Each resolution plan would be required to include information on the legal ownership of such systems and associated software, licenses, or other intellectual property. Each Enterprise would be required to map key management information systems and applications to core business lines that use or rely on them and to include information on the key internal reports used to monitor the financial health, risks, and operation of the Enterprise and core business lines.

The proposed rule would require each resolution plan to include a description of the capabilities of the Enterprise's management information systems to collect, maintain, and report the information and other data underlying the resolution plan, in a timely manner to Enterprise management to FHFA. Each Enterprise would be required to identify in its resolution plan deficiencies, gaps, or weaknesses in the capabilities of its management information systems and describe actions the Enterprise plans to undertake, including the associated timelines for implementation, to address such deficiencies, gaps, or weaknesses. The goal of the analysis, and any practical steps identified by the Enterprise, is to confirm the continued availability of the key management information systems that support core business lines through resolution, including their availability to the LLRE.

Finally, each Enterprise resolution plan would be required to describe the process for FHFA to access the management information systems and applications required to be identified.

Executive summary. The proposed rule would require each resolution plan to include an executive summary, addressing the key elements of the Enterprise's strategic analysis; identifying material changes that occurred since the Enterprise's prior resolution plan, if any; and, describing changes to the previously submitted resolution plan because of any change in law or regulation, guidance or supervisory feedback from FHFA, or any identified material change. The executive summary should also describe actions taken by the Enterprise to improve the feasibility or effectiveness of the resolution plan or remediate, or otherwise mitigate, any material weaknesses or impediments to a rapid and orderly resolution.

Enterprise point-of-contact. The proposed rule would require each Enterprise to identify a senior management official responsible for serving as a point-of-contact regarding the resolution plan, in the resolution plan.

Public section of the resolution plan; confidentiality of other parts. The proposed rule would require each resolution plan to include an identified public section—in essence, a second executive summary that describes the business of the Enterprise and its identified core business lines and associated operations and services. The public section would address as well financial information regarding assets, liabilities, capital and major funding sources; derivative activities, hedging activities, and CRT instruments; listing memberships in material payment, clearing or settlement systems; identifying the Enterprise's principal officers; the Enterprise's corporate governance structure and processes related to resolution planning, including the identification of core business lines; and, material management information systems. The public section would include a high-level description of the Enterprise's strategies to facilitate its resolution by FHFA as receiver, such as the types of potential purchasers of the Enterprise's core business lines and other significant assets, and steps 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 the amount of potential loss to the Enterprises' investors and creditors. The proposed rule would require that the public section clearly reflect the

required and prohibited assumptions governing development of the resolution plan.

FHFA notes that the DFA section 165 rule requires bank holding companies to identify “material entities” in the public sections of their resolution plans.⁴³ FHFA has not proposed a similar requirement, considering the corporate structures of the Enterprises. Specifically, as defined in the DFA section 165 rule, a “material entity” is a “subsidiary or foreign office of the [bank holding] company that is significant to the activities of an identified critical operation or core business line, or is financially or operationally significant to the resolution of the [bank holding] company.”⁴⁴ Were FHFA to adopt a similar requirement and definition, each Enterprise would identify one “material entity”—CSS.

Based on the DFA section 165 rule definition of “material entity,” FHFA does not view that rule’s requirement to identify such entities in the public section of a bank holding company’s resolution plan as intending to require the company to identify its major counterparties or third-party providers. Only entities that are “significant to the activities of an identified critical operation or core business line” or “financially or operationally significant” to the bank holding company’s resolution *and* that are within the company’s organizational structure would be required to be identified in the public section of the bank holding company’s resolution plan.

Because FHFA sees little, if any value, in requiring each Enterprise to identify CSS as its single “material entity,” FHFA has not proposed a similar requirement for the public section of an Enterprise resolution plan.⁴⁵ FHFA requests comment, however, on whether an Enterprise should be required to identify significant third-party providers and major counterparties in the public section of its resolution plan.

FHFA expects to publish the public section of each Enterprise’s resolution plan on its website. If published as proposed, the public section would

make clear the assumptions pursuant to which the Enterprise drafted its resolution plan, including the assumption that no government support will be available to prevent the failure of an Enterprise or to fund its resolution. It would indicate the extent to which potential claims by creditors and counterparties against the Enterprise might be satisfied in a resolution, and priority of those claims. By providing the public with greater transparency about the satisfaction of potential claims and the manner in which those claims might be satisfied, FHFA believes publishing the public section of each Enterprise’s resolution plan would foster market discipline by making clear to investors in Enterprise-guaranteed MBS and Enterprise debt that they should no longer rely on an implicit government guarantee and that they should price the risk of these investments accordingly. FHFA may also publish other information about Enterprise resolution planning, which may include its high-level assessments of the Enterprises’ resolution plans.

With regard to the first resolution plans the Enterprises submit, however, it is plausible FHFA would not publish the public section, but may publish information based on it or drawn from it on FHFA’s website or in its Annual Report to Congress. This approach recognizes that the Enterprises and FHFA will learn from the process of developing and reviewing resolution plans, and balances the desire for transparency and market awareness of Enterprise resolution plans with the desire to permit improvement in resolution plans before the public sections are published.

All material that is not in the public section would be presumed to be confidential, and the proposed rule provides that information contained in the confidential section of a resolution plan would be treated as confidential in line with applicable law. The proposed rule would provide a process for an Enterprise to request confidential treatment of information in a resolution plan or any related materials 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), and states that FHFA will determine confidentiality in accordance with applicable exemptions under the Freedom of Information Act, FHFA’s rule implementing that Act, and FHFA’s rule on the availability of non-public information and its statutory requirements and authorities.

Preparation of the initial resolution plan. FHFA recognizes the burden associated with developing an initial

resolution plan, including establishing necessary processes, procedures, and systems. Although FHFA proposes to require an Enterprise’s initial resolution plan to include all informational elements set forth in the proposal, FHFA expects the process of submission and review of the initial resolution plan to involve dialogue with each Enterprise. In developing its initial resolution plan, each Enterprise should focus on the key elements of the resolution plan, including identifying core business lines and associated operations, services, functions, and supports, developing a robust strategic analysis, and identifying and describing the interconnections and interdependencies among the Enterprise, its affiliates, and its third-party providers.

Incorporation by reference of material from prior resolution plans. FHFA proposes to permit an Enterprise to incorporate by reference information from a prior resolution plan submitted to FHFA, provided that the information remains accurate in all material respects. The “incorporating” resolution plan would be required to clearly identify the information that is being incorporated as well as the resolution plan in which it was originally contained and its specific location in that plan.

D. FHFA Review and Feedback, Plan Deficiencies, and the “Credible” Standard

FHFA review and feedback. After a resolution plan is submitted, FHFA would review it and provide feedback to the Enterprise. Feedback could range from informal discussion with an Enterprise to an FHFA determination of, and notice to the Enterprise identifying, deficiencies in the resolution plan as submitted. FHFA feedback could address any planned actions or changes set forth by the Enterprise that FHFA agrees could facilitate a rapid and orderly resolution, or priority or timing of actions or changes to be undertaken by the Enterprise. After FHFA and Enterprise experience over the first few resolution plan submission and review cycles, it may also be appropriate for FHFA to share more general “lessons-learned” feedback on meeting rule requirements and developing a resolution plan, or for FHFA to develop and publish responses to frequently-asked-questions.

FHFA expects that it would first assess submitted resolution plans for substantive completeness. If additional information is necessary in order for FHFA to review a plan, the Enterprise would receive notice and be provided

⁴³ 12 CFR 243.11(c)(2)(i). “Material entity” is differently defined but appears to be similarly applied in the FDIC IDI rule, *id.*, 12 CFR 360.10(b)(8).

⁴⁴ *Id.*, 12 CFR 243.2.

⁴⁵ FHFA also notes that resolution of CSS is not addressed by the proposed resolution planning rule, and the proposed rule would not require CSS to develop a resolution plan. On the other hand, as an affiliate of an Enterprise, CSS could be within FHFA resolution authority. FHFA expects to address these aspects of its supervision of CSS at a different time.

an opportunity to submit the missing information, generally within 30 days. An Enterprise that does not receive a notice that additional information is needed may assume that FHFA has accepted the plan as substantially complete; however this does not prevent FHFA from making reasonable requests for additional information it believes would be helpful to understand the Enterprise's resolution plan in the course of its review.

FHFA believes a completeness review would improve the efficiency and effectiveness of the review process, in particular because it establishes a process for obtaining missing information outside of the deficiency identification process (discussed below). FHFA also observes, however, that a resolution plan that is missing substantial information, or as to which an Enterprise does not timely provide missing information, may warrant a deficiency notice.

FHFA notice following review; determination of deficiencies. The proposed rule would establish a process for FHFA to identify deficiencies in an Enterprise's resolution plan and provide notice to the Enterprise identifying deficiencies or affirming that there were no deficiencies. For this purpose, the proposed rule would define "deficiency" as an aspect of the 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. For example, a deficiency may be that the nature, extent, or frequency an Enterprise's reporting on resolution planning to the board of directors is insufficient or that an Enterprise's contracts with third-party providers do not clearly address continuity of services or operations after an LLRE is established as successor to the Enterprise. An Enterprise receiving a notice of deficiency would be required to submit a revised resolution plan that corrects the deficiency, which may include planned actions or next steps.

Because a notice of deficiency would trigger the need for an Enterprise to submit a revised resolution plan that addresses the deficiency, the proposed rule would establish the principle that a deficiency would be something an Enterprise could plausibly address by taking or adding a planned action, considering of additional factors, or undertaking additional strategic analysis. Although there could be an overlap between deficiencies and material weaknesses or impediments identified by the Enterprise in its resolution plan as conceived and

described in its strategic analysis, FHFA does not anticipate identifying as deficiencies those material weaknesses or impediments to a well-conceived plan that an Enterprise is reasonably unable to address, or which would be impracticable to change.

FHFA notes that the DFA section 165 rule includes reference to "shortcomings," defined as "a weakness or gap that raises questions about the feasibility of a [bank holding] company's resolution plan, but does not rise to the level of a deficiency."⁴⁶ Determination of a shortcoming in a resolution plan would not trigger the requirement to submit a revised plan, but unaddressed shortcomings could become deficiencies in subsequent plans. FHFA does not propose a similar concept because, as the proposed rule indicates, FHFA could inform an Enterprise through routine communications of any concerns with its resolution plan that do not yet rise to the level of a "deficiency," but which could rise to such a level if unaddressed in future plans. FHFA requests comment on whether a final resolution planning rule should include a process for FHFA identification of a "shortcoming," in addition to a "deficiency" and, if so, whether FHFA should adopt a definition of "shortcoming" similar to that contained in the DFA section 165 rule.

"Credible" standard. Concepts of deficiency in a resolution plan, and a plan's identification of material weaknesses in or impediments to resolution, must be considered in the context of a "credible" resolution plan. While "credible" is commonly used as a standard for resolution plans, it is not always defined when used.⁴⁷ As did the FDIC, FHFA has determined to propose a rule standard for a resolution plan to be "credible."

Specifically, FHFA is proposing to consider a resolution plan to be "credible" if, demonstrating consideration of the proposed rule's required and prohibited assumptions, the plan's strategic analysis and detailed information required are well-founded and based on information and data that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets. A resolution plan that meets this standard will reflect depth and thoroughness of thought and analysis, clarity and

appropriateness of assumptions and projections, and accuracy and detail in supporting data and other information. Under this standard, a resolution plan may be "credible" even if it identifies material weaknesses or impediments to rapid and orderly resolution or if it sets forth steps that an Enterprise indicates it will take to improve the likelihood of its rapid and orderly resolution. FHFA is not proposing to correlate identification of deficiencies with application of the "credible" standard, although it is inevitable that sufficiently significant deficiencies would result in a resolution plan that is not credible.

Through its proposed standard for a "credible" resolution plan, FHFA seeks to clarify that such a plan would not require an Enterprise to produce a roadmap that FHFA would follow to discharge its responsibilities as receiver. This clarification is important for two reasons: (1) To reassure the Enterprises, and inform other stakeholders that Enterprise resolution plans may stop short of an FHFA-executable "playbook" and still be credible; and, (2) To emphasize that resolution of an Enterprise remains FHFA's responsibility, to be carried out pursuant to its statutorily conferred authorities and discretion.

On the other hand, the "credible" standard would make the Enterprises accountable to FHFA on critical aspects of resolution planning as the standard includes concepts of "well-founded" and "verifiable." FHFA expects to use its examination authority to assess such aspects of an Enterprise's resolution plan as the capabilities of the Enterprise's management information systems to collect and maintain information and data underlying the resolution plan and report it in a timely manner to management of the Enterprise and to FHFA. Such capabilities and the importance of assessing them were both emphasized in consultations with FDIC and FRB staff on their experience implementing the FDIC IDI and DFA section 165 rules.⁴⁸

⁴⁸ See also, 77 FR 3075, 3083 (Jan. 23, 2012) (FDIC IDI final rule) ("The [IDI's] ability to produce the information and data underlying its resolution rapidly and on demand is a vital element in a credible [r]esolution [p]lan.") and 76 FR 58379, 58380 (Sept. 21, 2011) (FDIC IDI interim final rule) ("The [Financial Stability Board] Crisis Management Working Group has recommended that supervisors ensure that firms are capable of supplying in a timely fashion the information that may be required by the authorities in managing a financial crisis.").

Verifying capabilities set forth in an Enterprise's resolution plan is not the only area of resolution planning that would be subject to FHFA's examination authority. FHFA may use its examination authority at any time to review Enterprise compliance with a resolution planning

⁴⁶ 12 CFR 243.8(e).

⁴⁷ Compare FDIC IDI rule, 12 CFR 360.10(c)(4)(i) (used and defined); DFA section 165 rule, 12 CFR 243.8(b) (used but not defined) and Treasury Department *Housing Reform Plan* supra, p. 13 (used but not defined).

Timing of feedback. FHFA intends to provide substantive feedback to an Enterprise on an informationally complete resolution plan within 12 months of receipt. The proposed rule would permit FHFA to extend that timeframe if extenuating circumstances so require. FHFA wishes to provide timely feedback but must take the time necessary to review each plan appropriately. Given that FHFA has proposed to require each Enterprise to submit resolution plans every two years, receipt of feedback one year after submission of a plan would provide the Enterprise another year to incorporate that feedback into its next resolution plan.

If FHFA provides an Enterprise a notice of deficiency, the Enterprise must submit appropriate revisions to its prior plan within a timeframe established by the Agency. Procedures for submitting revised resolution plans and taking other corrective actions are addressed below.

E. Corrective Processes; Significance as a Prudential Standard

The proposed rule would require an Enterprise that receives notification from FHFA of any deficiency in its resolution plan to submit a revised resolution plan to FHFA that addresses the deficiency. The proposed rule would also identify the resolution planning rule, in its entirety, as a prudential standard within the meaning of 12 U.S.C. 4513b (section 4513b) and for purposes of 12 CFR part 1236. The interplay of these two elements of the proposed rule is described below.

Section 4513b(b) authorizes FHFA to establish prudential management and operations standards for its regulated entities and provides that if a regulated entity fails to meet a standard, FHFA may require submission of a corrective plan specifying actions that the regulated entity will take to correct the deficiency.⁴⁹ To implement section 4513b, FHFA has adopted a prudential management and operations standards (PMOS) regulation, at 12 CFR part 1236. That regulation addresses FHFA determinations that a regulated entity has failed to meet a standard and provides that FHFA may base that determination on an examination, inspection, or any other information.⁵⁰ The PMOS regulation codifies FHFA's authority to permit a regulated entity to

submit a PMOS corrective plan in conjunction with other required submissions, such as a capital restoration plan or a response to an examination report.⁵¹ If a regulated entity fails to submit a corrective plan or fails to implement an approved corrective plan, the PMOS regulation provides for an FHFA order to correct the deficiency or to undertake additional corrective or remedial measures as FHFA may require.

FHFA has determined that it is legally appropriate and would be sound policy to identify its resolution planning rule as a prudential standard. Identifying the rule as a prudential standard provides FHFA access to section 4513b corrective measures, if necessary, to address deficiencies in a resolution plan, an Enterprise's failure to take actions set forth in its resolution plan that FHFA agrees could facilitate the Enterprise's rapid and orderly resolution, or concerns with an Enterprise's resolution planning process.⁵² Section 4513b corrective measures are in line with FHFA's approach to resolution planning, which will be iterative and involve dialogue between an Enterprise and FHFA. A corrective approach to encourage or direct Enterprise management's attention to concerns of high priority to FHFA could in some cases be more constructive and more conducive to improvements in a resolution plan or the Enterprise planning process than an enforcement approach.

⁵¹ *Id.*, 1236.4(c)(2)(ii).

⁵² This determination reflects, among other things: (1) Safety and Soundness Act provisions that require FHFA to act as receiver for an Enterprise, should receivership be necessary; (2) Requirements for FHFA, as receiver, to establish an LLRE to continue the business of an Enterprise in resolution; (3) Requirements for the receiver to pay all valid obligations of the Enterprise, pursuant to the receiver's determination of claims; and, (4) clarifies the absence of any U.S. government support for the Enterprises or FHFA when acting as receiver. Prudential management and operation of an Enterprise and its successor LLRE during the resolution process will require advance planning. Also of note, FHFA is directed by statute to establish prudential management and operations standards on topics that would have a direct and critical bearing on an Enterprise's rapid and orderly resolution, such as: (1) The adequacy of management information systems; (2) Adequacy and maintenance of liquidity and reserves; (3) Overall risk management processes, including processes to identify, measure, monitor, and control material risks and for business resumption (or continuation) for all major systems to protect against disruptive events; (4) Management of counterparty risk; and, (5) Maintenance of adequate records to enable FHFA to determine the financial condition of an Enterprise. See 12 U.S.C. 4513b(a)(1), (4), (8), (9), and (10). It would be possible to address resolution planning in the context of these and other required standards, but it would be more coherent to address it in a single, more focused, standard.

Because the resolution planning standard would be established as a regulation, FHFA could also bring an enforcement action if appropriate grounds existed and FHFA determined such action to be necessary.⁵³ Under its general enforcement authority, FHFA may order an Enterprise to cease and desist from a violation of law, which would include the final resolution planning rule, and may require an Enterprise to take other appropriate corrective action, including by implementing a plan to correct a violation of the final resolution planning rule. FHFA also may impose a civil money penalty for a violation of a final resolution planning rule.

Procedurally, the proposed rule permits FHFA to deem a determination of a deficiency in a resolution plan or an Enterprise's failure to undertake actions or changes that FHFA identified in any notice to an Enterprise following review of a resolution plan to be the failure of a prudential standard and to deem the Enterprise's submission of a revised resolution plan in accordance with any final resolution planning rule to be a corrective plan for purposes of the PMOS regulation. The proposed rule states that FHFA may find an Enterprise to have failed the resolution planning standard if the Enterprise does not undertake any planned action or change set forth by the Enterprise, and which FHFA identified as necessary in its notice to the Enterprise following review of the resolution plan.

In such cases, FHFA could provide the Enterprise a notice of failure in accordance with the PMOS regulation, and would inform the Enterprise of the need to submit a PMOS corrective plan or, a revised resolution plan that is deemed to be a PMOS corrective plan. Within 90 days, absent FHFA establishing a longer or shorter period, the Enterprise would be required to submit a revised resolution plan that addresses: (1) The deficiencies identified and discusses revisions to the plan to address the deficiencies; (2) Any changes to the Enterprise's business operations and corporate structure the Enterprise proposes to undertake to address the deficiencies, and a timeline for completing them; and, (3) Why the Enterprise believes the revised resolution plan is feasible and would facilitate its rapid and orderly resolution by FHFA, as receiver.

If a regulated entity fails to submit a corrective plan (which may be a revised

⁵³ See 12 U.S.C. 4513b(a) (authorizing FHFA to establish standards as regulations) and 12 U.S.C. 4631(a)(1) (authorizing FHFA to issue a cease-and-desist order for, among other things, violating a regulation).

rule, including the Enterprise's methodology and process for identification of core business lines, resolution planning strategic analysis, and corporate governance related to resolution planning.

⁴⁹ 12 U.S.C. 4513b(b)(2)(B).

⁵⁰ 12 CFR 1236.4(a).

resolution plan) or fails to implement an approved corrective plan, then, in accordance with 12 U.S.C. 4513b and the PMOS regulation, FHFA may order the Enterprise to correct the deficiency or to implement the corrective plan and take other corrective or remedial measures.

F. Corporate Governance Related to Resolution Planning

The proposed rule would require the Enterprise's board of directors to approve each preliminary notice of core business lines prior to submission to FHFA, with approval noted in the minutes. A similar process would be required for any Enterprise request for FHFA reconsideration of a business line.

The proposed rule would require the Enterprise's board to approve each resolution plan prior to its submission to FHFA, with approval noted in the minutes. A revised resolution plan is considered a resolution plan, also requiring board approval. In contrast, an "interim update" (discussed below) would not be considered a resolution plan and would not require board approval. The content of an interim update, however, may warrant board approval, as a matter of appropriate corporate governance related to the nature of such update.

G. Timing of Plan Submission; Interim Updates

Submission of initial resolution plan; successive plans. FHFA proposes to require each Enterprise to submit its initial resolution plan 18 months after the regulatory due date for the initial notice of core business lines, which FHFA proposes to be three months after the effective date of a final rule. FHFA anticipates that any final rule would be effective 30 days after publication in the **Federal Register**. As a result, an Enterprise's first resolution plan would be required to be submitted to FHFA slightly less than two years after the final rule is published in the **Federal Register**. The due date for the initial plan will establish the due dates for successive plans with FHFA proposing to require each Enterprise to submit a resolution plan every two years thereafter.

While the effective date for a final rule is uncertain, FHFA is aware that other end-of-year reporting requirements may make it more challenging if the recurring due date for resolution plans were to fall in the fourth quarter of the calendar year. For that reason, among others, the proposed rule includes a provision permitting FHFA to alter the submission date of

resolution plans. FHFA would provide notice to an Enterprise of any altered submission due date established by a final rule with the intention of providing the Enterprises two full years to develop their initial resolution plans. FHFA could alter a submission date on any other basis, such as on request by an Enterprise or if financial or economic conditions merit a delay.

Interim update to a prior plan. The proposed rule would permit FHFA to request an interim update to the Enterprise's most recently submitted resolution plan, on written notice to the Enterprise. FHFA may require an interim update after receiving a notice of an extraordinary event, for example. FHFA's notice requiring an interim update would set forth a deadline for submission and identify the portions or aspects of the resolution plan to be updated. FHFA expects to provide the Enterprise a reasonable amount of time to complete the update, and may alter any date set forth in the notice, in its discretion and as appropriate.

An interim update is not considered a resolution plan. Consequently, submission of an interim update would not itself affect the date for submission of the next resolution plan. If FHFA determines that it is appropriate, the Agency could alter that submission date on notice to an Enterprise.

H. Effect of a Resolution Plan on Rights of Other Parties

The proposed rule also includes three provisions addressing the effect of an Enterprise resolution plan on such considerations as preservation of privileges, execution of a receivership, and rights of private parties. The proposed rule would clarify and assert that the submission of any nonpublic data or information under FHFA's resolution planning rule would 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 proposed rule also indicates that FHFA may assert examination privilege for any nonpublic data or information submitted under the rule.

The proposed rule would also clarify that an Enterprise's resolution plan would not have any binding effect on FHFA when appointed as receiver under 12 U.S.C. 4617. The resolution plan would not be binding on FHFA as conservator, either currently or if FHFA is appointed conservator in the future. FHFA proposes to clarify that any final rule would not create any private right of action based on a resolution plan prepared by an Enterprise or submitted

to FHFA or based on any action taken by FHFA with respect to any such resolution plan. These provisions support the resolution planning process as a strategic, informational, and assessment regime which is critical to facilitate rapid and orderly resolution, but which does not commit FHFA to any action in exercising its authorities as receiver. FHFA or an Enterprise may take actions that are different from those considered or contained in any resolution plan.

III. Section-by-Section Summary

A. Section 1242.1 Purpose; Identification as a Prudential Standard

This section of the proposed rule sets forth its purposes and goals related to Enterprise resolution, identifies the rule as a prudential standard for purposes of 12 U.S.C. 4513b and FHFA's implementing regulation at 12 CFR part 1236, and addresses the effect of such identification relative to corrective plans required to be submitted pursuant to section 4513b. FHFA may also enforce this part pursuant to sections 1371, 1372, and 1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, and 4636).

B. Section 1242.2 Definitions

This section of the proposed rule refers users to statutory definitions and FHFA's regulation setting forth definitions that are generally applicable (12 CFR part 1201) and sets forth definitions of other words and terms that are not defined by statute or in the Safety and Soundness Act. Words or terms used in the proposed rule that are defined by the Safety and Soundness Act or part 1201 include "affiliate," "authorizing statutes," "default," "in danger of default," "enterprise," and "limited-life regulated entity." The proposed rule sets forth definitions of "credible," "core business line," "material change," and "rapid and orderly resolution." The proposed meaning of each of those terms is described above, in material relevant to the use of such term.

C. Section 1242.3 Identification of Core Business Lines

This section of the proposed rule sets forth requirements related to identification of "core business lines," including associated operations, services, functions, and supports. The proposed rule would establish a process for identification, including preliminary identification by each Enterprise and FHFA review and determination of core business lines, address the Enterprises' periodic review of business lines,

establish a process for changes to identifications, address the timing of each Enterprise's initial preliminary identification of core business lines, and address the timing for inclusion of a newly-identified core business line to be included in the following required resolution plan.

D. Section 1242.4 Credible Resolution Plan Required; Other Notices to FHFA

This section of the proposed rule establishes the requirement for Enterprise resolution plans to facilitate "rapid and orderly resolution" in the event FHFA is appointed receiver, sets forth requirements related to timing and frequency of submission of resolution plans to FHFA, and establishes processes for determining the timing for submission of each Enterprise's initial resolution plan and subsequent plans. This section also addresses interim updates to a resolution plan that may be required by FHFA.

This section establishes the requirement that an Enterprise submit a notice to FHFA on an extraordinary event, which may include a "material change," as well as the timing and content of such a notice. This section also sets forth other matter related to the development and submission of a resolution plan, including the requirement for Enterprise board approval of a resolution plan prior to submission of the plan for FHFA. Finally, this section addresses the incorporation of material from a prior resolution plan into a subsequent plan by reference and addresses identification of an Enterprise point-of-contact for matters regarding the resolution plan.

E. Section 1242.5 Informational Content of a Resolution Plan; Required and Prohibited Assumptions

This section of the proposed rule sets forth substantive requirements for an Enterprise resolution plan, including important required and prohibited assumptions that must underpin and be reflected throughout each resolution, including in each plan's public section. This section describes the informational content of each resolution plan, including an executive summary, strategic analysis, and information on corporate governance related to resolution planning, organizational structures, management information systems, and interconnections and interdependencies.

F. Section 1242.6 Form of Resolution Plan; Confidentiality

This section of the proposed rule sets forth requirements for the form of a

resolution plan, which must include a public section and a confidential section. FHFA expects to publish the public section of each resolution plan on its website. This section establishes both the presumption that material not included in the public section is confidential and a process for an Enterprise to request confidential treatment of information for purposes of the Freedom of Information Act and FHFA's implementing regulation, and for purposes of FHFA's regulation on disclosure of nonpublic information. This section of the proposed rule also asserts the non-waiver of otherwise applicable Federal and state privileges, as a result of submitting a resolution plan and asserts the bank examination privilege for any nonpublic information or data in the resolution plan and related materials submitted to FHFA.

G. Section 1242.7 Review of Resolution Plans; Resubmission of Deficient Resolution Plans

This section of the proposed rule addresses FHFA review of a resolution plan, after submission by an Enterprise, including an initial review for completeness, any request by FHFA for missing or additional information, an Enterprise's opportunity to provide such information, and a timeframe for providing missing or additional information. In this section, the proposed rule addresses FHFA's substantive review of a complete resolution plan, which may result in FHFA's determination of a deficiency in the plan. In this section, and for this purpose, the proposed rule defines "deficiency." The proposed rule establishes a process for FHFA to provide an Enterprise notice of a deficiency (which, in accordance with § 1242.1(b), may be deemed a determination of failure of a prudential standard) and for Enterprise submission of a revised resolution plan to address such a deficiency (which, in accordance with § 1242.1(b) of the proposed rule, may be deemed a corrective plan for purposes of FHFA's PMOS regulation).

This section of the proposed rule also sets forth the timeframe for submission of any revised resolution plan, and includes a provision permitting FHFA to extend timeframes in any resolution planning rule adopted as final, on its own initiative or on request by an Enterprise.

H. Section 1242.8 No Limiting Effect or Private Right of Action

This section of the proposed rule establishes that a resolution plan does not limit or bind FHFA when acting as conservator or receiver, such that FHFA

may, or may not, take any action set forth in an Enterprise's resolution plan; and, also that neither a resolution plan nor an FHFA rule requiring such a plan would give rise to any private right of action. An Enterprise resolution plan is intended, among other things, to provide strategic analysis and information to FHFA that it may use for its benefit, including for purposes of any capabilities or other assessment, in FHFA's sole discretion.

IV. Comments Specifically Requested

As stated above, FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. In addition to comments specifically requested within the description of the proposed rule, above, FHFA also requests comment on the questions set forth below. The most helpful comments reference the specific questions listed, explain the reason for any changes, and include supporting data.

Scope

1. Are the stated goals of Enterprise resolution planning clear? Are there goals that should be added, removed, or modified?

2. Would Enterprise resolution planning benefit from the availability of funding mechanisms such as convertible long-term debt or other similar loss-absorbing instruments (as recommended in the *Treasury Housing Reform Plan*)?

3. What advantages or disadvantages does the corporate organization of the Enterprises as single operating companies present for FHFA receivership?

Definitions

4. Are the defined terms in the proposed rule clear? Do they require further clarification and if so, how should they be defined?

5. Are there terms used in the proposed rule that should be defined in a final rule?

6. Are there terms or operative concepts used in other resolution planning regimes, such as the DFA section 165 rule or the FDIC IDI rule, that should be incorporated into an FHFA resolution planning rule (e.g., "material entity," "critical operation")?

Governance and Process

7. Are there resolution planning governance and oversight requirements in the proposed rule that could be clarified? Are there additional governance and oversight requirements that should be included?

8. Is the required frequency of resolution plan submission in the proposed rule appropriate? If not, what frequency would be appropriate?

9. Are the proposed timelines for Enterprise resolution planning (*i.e.*, core business lines identification, resolution plan submissions, revised plans, and interim updates) adequate for the Enterprises to develop and submit the information required by the proposed rule? If not, what timelines would be appropriate?

10. Should the proposed rule provide greater specificity (*e.g.*, in terms of a dollar amount or percentage of assets acquired or disposed of in a significant transaction) with regard to the definition of an Enterprise extraordinary event that would require notice to FHFA?

Core Business Lines

11. Should the proposed rule provide greater specificity on the required methodology, assessment, and process for Enterprise identification of core business lines?

12. Is the concept of “core business lines” clear, and is “core business line” defined appropriately? If not, how can FHFA provide additional clarity?

Resolution Plan Informational Content and Assumptions

13. Are the informational content elements described in the proposed rule appropriate and adequate for resolution planning? Are there any informational content elements in the proposed rule that create an unnecessary burden or should not be included in an Enterprise resolution plan?

14. Are there informational content elements described in the proposed rule that could be clarified? How can FHFA provide additional clarity?

15. What additional informational content elements should the final rule require? Describe any impediments to collection and production of existing or additional informational elements identified. What changes could FHFA make to reduce the identified burdens and impediments?

16. Should the final rule require any informational content elements to be delivered to FHFA on a more frequent basis (*e.g.*, quarterly) or available to FHFA on an “on demand” basis? What impediments apply to making such information available more frequently or on demand?

17. Are the required and prohibited assumptions for Enterprise resolution planning in the proposed rule appropriate? Are there any required or prohibited assumptions for Enterprise resolution planning that require

clarification? Are there required or prohibited assumptions that should be added?

FHFA Review of Plans

18. Are there explicit factors FHFA should consider in determining whether a resolution plan is deficient?

Confidentiality

19. Are there portions of the Enterprise resolution plans that should be made available to the public? Are there portions that should remain confidential and privileged? What should FHFA consider in making such determinations?

20. Would greater transparency around Enterprise resolution plans impact market expectations and improve market discipline? If so, identify specific elements where transparency would have the greatest effect and describe how transparency into those elements would improve market discipline. For example, would a public description of Enterprise sources of funding in receivership or a related discussion of how losses may be allocated enhance market discipline? Are there other ways the proposed rule should be modified to improve market discipline, and if so, how should the proposed rule be modified?

V. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

VI. 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 this proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation would apply only to the Enterprises, which are not

small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1242

Administrative practice and procedure, Government-sponsored enterprises, Reporting and record keeping requirements, Securitizations.

Authority and Issuance

■ For the reasons stated in the preamble, and under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA proposes to amend chapter XII of title 12 of the Code of Federal Regulations by adding new part 1242 to subchapter C to read as follows:

CHAPTER XII—Federal Housing Finance Agency

SUBCHAPTER C—Enterprise Regulations

PART 1242—RESOLUTION PLANNING

Sec.

1242.1 Purpose; identification as a prudential standard.

1242.2 Definitions.

1242.3 Identification of core business lines.

1242.4 Credible resolution plan required; other notices to FHFA.

1242.5 Informational content of a resolution plan; required and prohibited assumptions.

1242.6 Form of resolution plan; confidentiality.

1242.7 Review of resolution plans; resubmission of deficient resolution plans.

1242.8 No limiting effect or private right of action.

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.

§ 1242.1 Purpose; identification as a prudential standard.

(a) *Purpose.* The purpose of this part is to require each Enterprise to develop a plan for submission to FHFA that would assist FHFA in planning for the rapid and orderly resolution of an Enterprise using FHFA’s receivership authority at 12 U.S.C. 4617, in a manner that:

(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.* This part is a prudential standard pursuant to section 1313B of the Safety and Soundness Act, 12 U.S.C. 4513b, and is subject to 12 CFR part 1236. In its discretion, FHFA may deem:

(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. In its discretion, FHFA may also deem a revised, resubmitted resolution plan to be a corrective plan for purposes of § 1236.4.

§ 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 means a business line of the Enterprise that plausibly would continue to operate in a limited-life regulated entity, considering the purposes, mission, and authorized activities of the Enterprise as set forth in its authorizing statute and the Safety and Soundness Act. *Core business line* includes associated operations, services, functions, and supports necessary for any identified core business line to be continued, such as servicing, credit enhancement, securitization support, information technology support and operations, and human resources and personnel.

Credible, with regard to a resolution plan, means a resolution plan that:

(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 means an event, occurrence, change in conditions or

circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on:

(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 means a process for establishing a limited-life regulated entity as successor to the Enterprise under section 1367 of the Safety and Soundness Act (12 U.S.C. 4617), including transferring Enterprise assets and liabilities to the limited-life regulated entity, such that succession by the limited-life regulated entity can be accomplished promptly and in a manner that substantially mitigates the risk that the failure of the Enterprise would have serious adverse effects on national housing finance markets.

§ 1242.3 Identification of core business lines.

(a) *Enterprise preliminary identification; notice to FHFA; timing.*

(1) Each Enterprise shall conduct periodic reviews of its business lines to identify core business lines, consistent with the requirements of paragraph (a)(2) of this section.

(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.*

(1) Within three months of receiving an Enterprise notice of the preliminary identification of a business line as a core business line, FHFA will provide notice to the Enterprise of its determination of each core business line. FHFA may also identify operations, services, functions, or supports associated with any core business line.

(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—(1) Reconsideration initiated by an Enterprise.* (i) An Enterprise may request that FHFA reconsider the identification under paragraph (a) or (b) of this section, by submitting a written request to FHFA that includes a clear and complete

statement of all arguments and all material information that the Enterprise believes is relevant to reconsideration as a core business line.

(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.* FHFA may reconsider the identification of any business line, including reconsideration of any operation, service, function, or support, at any time and in its discretion, on written notice to an Enterprise.

(3) *FHFA notice of reconsideration.* FHFA will provide a notice of reconsideration to the affected Enterprise, stating the results of the reconsideration. If FHFA determines to change an identification, such notice may also provide an effective date or other delaying or triggering condition for the change to become effective.

(4) *Effect of reconsideration.* For purposes of Enterprise resolution plans, identification as a core business line continues in effect until any notice of reconsideration removing such identification becomes effective.

§ 1242.4 Credible resolution plan required; other notices to FHFA.

(a) *Credible resolution plan required; frequency and timing of plan submission—*(1) *Credible resolution plan required; resolution plan submission dates.* Each Enterprise is required to submit a credible resolution plan to FHFA in accordance with frequency and timing requirements established by FHFA. Each Enterprise is required to submit its initial resolution plan 18 months after the date on which it is required to submit its initial notice preliminarily identifying core business lines to FHFA in accordance with § 1242.3(a)(2). Thereafter, each Enterprise shall submit a resolution plan to FHFA not later than two years following the submission date for the prior resolution plan, unless otherwise notified by FHFA in accordance with paragraph (a)(2) of this section.

(2) *Altering submission dates.* Notwithstanding anything to the contrary in this part, FHFA may determine that an Enterprise shall submit its resolution plan on a date different from any date provided in paragraph (a)(1) of this section, which may be before or after any date so established.

(3) *Interim updates.* FHFA may require that an Enterprise submit an update to a resolution plan submitted under this part, within a reasonable time, as determined by FHFA. FHFA shall notify the Enterprise of its requirement to submit an update under this paragraph (a)(3) in writing and shall specify the portions or aspects of the resolution plan the Enterprise shall update. Submission of an interim update does not affect the date for submission of a resolution plan, unless otherwise notified by FHFA in accordance with paragraph (a)(2) of this section.

(b) *Notice of extraordinary events; inclusion in next resolution plan.* Each Enterprise shall provide FHFA with a notice no later than 45 days after any material change, merger, reorganization, sale or divestiture of a business unit or material assets, or similar transaction, or any fundamental change to the Enterprise's resolution strategy. Such notice must describe such extraordinary event and explain how it may plausibly affect the resolution of the Enterprise. The Enterprise shall address any such extraordinary event with respect to which it has provided notice pursuant to this paragraph (b) in the next resolution plan submitted by the Enterprise, provided that plan is required to be submitted more than 90 days after submission of the notice of an extraordinary event to FHFA.

(c) *Board of directors' approval of resolution plan.* The board of directors of the Enterprise shall approve each resolution plan (including any revised resolution plan) before submission to FHFA, with such approval noted in board minutes.

(d) *Point of contact.* Each Enterprise shall identify an Enterprise senior management official and position responsible for serving as a point of contact regarding the resolution plan.

(e) *Incorporation of previously submitted resolution plan information by reference.* Any resolution plan submitted by an Enterprise may incorporate by reference information from a prior resolution plan submitted to FHFA, provided that:

(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.* Upon its own initiative or a written request by an Enterprise, FHFA may extend any time period under this part. Each extension request by an Enterprise shall be supported by a written statement describing the basis and justification for the request.

§ 1242.5 Informational content of a resolution plan; required and prohibited assumptions.

(a) *In general.* An Enterprise resolution plan shall reflect required and prohibited assumptions specified in paragraph (b) of this section and include information specified in paragraphs (c) through (h) of this section, as well as analysis, in detail, to facilitate a rapid and orderly resolution of the Enterprise by FHFA as receiver in a manner that minimizes the risk that resolution of an Enterprise would have serious adverse effects on the national housing finance markets, and to the extent possible, the amount of any losses to be realized by the Enterprise's creditors.

(b) *Required and prohibited assumptions when developing a resolution plan.* In developing a resolution plan, each Enterprise shall:

(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.* Each resolution plan of an Enterprise shall

include an executive summary describing:

(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.* Each resolution plan shall include a strategic analysis describing the Enterprise's plan for facilitating its rapid and orderly resolution by FHFA. Such analysis shall:

(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 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.* Each resolution plan shall:

(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.* Each resolution plan shall:

(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 related to trading and derivative activities, including a mapping to legal entity;

(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.*

(1) Each resolution plan shall include:

(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.*

The Enterprise senior management official responsible for serving as a point of contact regarding the resolution plan shall be identified in the resolution plan.

§ 1242.6 Form of resolution plan; confidentiality.

(a) *Form of resolution plan—*(1)

Generally. Each resolution plan of an Enterprise shall be divided into a public section and a confidential section. Each Enterprise shall segregate and separately identify the public section from the confidential section.

(2) *Content of public section.* The public section of a resolution plan shall clearly reflect required and prohibited assumptions set forth at § 1242.5(b) and consist of an executive summary of the resolution plan that describes the business of the Enterprise and includes, to the extent material to an understanding of the Enterprise:

(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.* (1) The confidentiality of each resolution plan and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)), 12 CFR part 1202 (FHFA's regulation implementing the Freedom of Information Act), and 12 CFR part 1214 (FHFA's regulation on the availability of non-public information).

(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.* (1) After receipt of a resolution plan, FHFA will either acknowledge acceptance of the plan for review or return the resolution plan if FHFA determines that it is incomplete or that substantial additional information is required to facilitate review of the resolution plan.

(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.* (1) Following review of a complete resolution plan, FHFA will send a notification to each Enterprise that:

(i) Identifies any deficiencies in the Enterprise's resolution plan (or confirms that no deficiencies 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) 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.

(c) *Resubmission of a resolution plan.* Within 90 days of receiving a notice of deficiency, or such shorter or longer period as FHFA may establish by written notice to the Enterprise, an Enterprise shall submit a revised resolution plan to FHFA that addresses all deficiencies identified by FHFA, and that discusses in detail:

(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.* A resolution plan submitted pursuant to this part shall not have any binding effect on FHFA when appointed as conservator or receiver under 12 U.S.C. 4617.

(b) *No private right of action.* Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by FHFA with respect to any resolution plan submitted under this part.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0618; FRL-10018-46-Region 9]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Arizona; West Pinal County; 1987 PM₁₀ Nonattainment Area Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part and to disapprove in part the state implementation plan (SIP) revision submitted by the State of Arizona to meet Clean Air Act (CAA or "Act") requirements for the 1987 PM₁₀ national ambient air quality standards (NAAQS or "standard") in the West Pinal County PM₁₀ nonattainment area. The State of Arizona's "2015 West Pinal Moderate PM₁₀ Nonattainment Area SIP" ("West Pinal County PM₁₀ Plan") addresses the CAA nonattainment area requirements for the 1987 PM₁₀ NAAQS, including requirements for an emissions inventory, an attainment demonstration, reasonable further progress, reasonably available control measures, contingency measures, and motor vehicle emissions budgets. The EPA is proposing to approve the base year 2008 emissions inventory for direct PM₁₀ and to disapprove the remaining elements of the West Pinal County PM₁₀ Plan.

DATES: Written comments must arrive on or before February 8, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2020-0618 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public