

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

## **PART 5—DISCLOSURE OF RECORDS AND INFORMATION**

1. The authority citation for part 5 continues to read as follows:

**Authority:** 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph “12”:

### **Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act**

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12. The Department of Homeland Security Internal Affairs system of records consists of electronic and paper records and will be used by DHS and its components. Internal Affairs is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Internal Affairs contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(1), (2), (3), and (5), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures

pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training, and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: November 6, 2008.

**Hugo Teufel III**,  
Chief Privacy Officer, Department of  
Homeland Security.

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## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Part 327**

**RIN 3064–AD35**

### **Assessments**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On October 7, 2008, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments on revisions to 12 CFR part 327 (see 73 FR 61560). The rulemaking proposed effective January 1, 2009, to raise the current assessment rates uniformly by seven basis points for the first quarter 2009 assessment period only; effective April 1, 2009, alter the way in which the FDIC's risk-based assessment system differentiates for risk and again change

deposit insurance assessment rates; and also effective April 1, 2009, make technical and other changes to the rules governing the risk-based assessment system. The proposed rules were published for a 30-day comment period, which is scheduled to close on November 17, 2008. In order to afford interested parties additional time beyond the present 30-day comment period to review the proposals with an April 1, 2009 effective date, the FDIC is extending the period for public comment by 30 days, that is, until December 17, 2008. The present 30-day comment period for the proposed seven basis point rate increase for the first quarter of 2009 only, with its separate proposed effective date of January 1, 2009, is not extended and will expire on November 17, 2008.

**DATES:** Comments must be received on or before December 17, 2008.

**ADDRESSES:** You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web Site.
- *E-mail:* [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Instructions:* All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Munsell W. St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898-8967; and Christopher Bellotto, Counsel, Legal Division, (202) 898-3801.

**SUPPLEMENTARY INFORMATION:** In its notice of proposed rulemaking (73 FR 61560), the FDIC proposes to improve the way the assessment system differentiates risk among insured institutions by drawing upon measures of risk that were not included when the FDIC first revised its assessment system pursuant to the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005

(collectively, the Reform Act).<sup>1</sup> The proposal will make the assessment system more sensitive to risk and the risk-based assessment system fairer, by limiting the subsidization of riskier institutions by safer ones. In addition, the FDIC proposes to change assessment rates, including base assessment rates, and to raise assessment revenue as required under the FDIC's October 7, 2008 Restoration Plan (73 FR 61598).

In this rulemaking, the FDIC requested comment on proposed rules that would (1) effective January 1, 2009, raise current assessment rates uniformly by seven basis points for the first quarter 2009 assessment period only; (2) effective April 1, 2009, alter the way in which the risk-based assessment system differentiates for risk and again change deposit insurance assessment rates; and (3) also effective April 1, 2009, make technical and other changes to the rules governing the risk-based assessment system. The proposed rules were published on October 16, 2008, for a 30-day comment period, which is scheduled to close on November 17, 2008.

To afford interested parties additional time beyond the present 30-day comment period to review only those portions of the proposal that would become effective April 1, 2009 (items (2) and (3) above), the FDIC is extending the period for public comment by 30 days. In light of this determination, the FDIC is providing the public additional time to comment on these aspects of the proposal, and requests that you submit your comments by December 17, 2008.

The present 30-day comment period for the proposed seven basis point rate increase for the January 2009 assessment period only, which has a separate proposed effective date of January 1, 2009, is not extended and will expire as originally provided on November 17, 2008.

Dated at Washington DC, this 7th day of November 2008.

By order of the Board of Directors.  
Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

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<sup>1</sup> Federal Deposit Insurance Reform Act of 2005, Public Law 109-171, 120 Stat. 9; Federal Deposit Insurance Conforming Amendments Act of 2005, Public Law 109-173, 119 Stat. 3601.

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1231

**RIN 2590-AA08**

### Golden Parachute and Indemnification Payments

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Proposed amendment.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to amend the interim final Golden Parachute Payments regulation published in the **Federal Register** on September 16, 2008 (73 FR 53356), and as corrected on September 19, 2008 (73 FR 54309), and on September 23, 2008 (73 FR 54673). This proposed amendment addresses prohibited and permissible indemnification payments with regard to any administrative proceeding brought by the FHFA against an entity-affiliated party of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks in light of the statutory requirements set forth in 12 U.S.C. 4514(e), as amended by the Housing and Economic Recovery Act of 2008.

**DATES:** Written comments on the proposed amendment to the Interim Final Regulation must be received on or before December 29, 2008. For additional information, see

**SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** You may submit your comments on the proposed amendment, identified by regulatory information number "RIN 2590-AA08," by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel; Attention: Comments/RIN 2590-AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel; Attention: Comments/RIN 2590-AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel, may be sent by e-mail at