

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1213

RIN 2590-AA20

Office of the Ombudsman

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is seeking comment on a proposed regulation to implement section 1317(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(i)). The proposed regulation would establish within FHFA an Office of the Ombudsman, which would be responsible for considering complaints and appeals from the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (collectively, regulated entities), the Office of Finance, and any person that has a business relationship with a regulated entity or the Office of Finance, regarding any matter relating to the regulation and supervision of the regulated entities or Office of Finance by FHFA.

DATES: Written comments on the proposed regulation must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit your comments on the proposed regulation, identified by regulatory information number “RIN 2590-AA20,” by any of the following methods:

- E-mail: Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to RegComments@fhfa.gov. Please include “RIN 2590-AA20” in the subject line of the message.
- 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 e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the Agency. Please include “RIN 2590-AA20” in the subject line of the message.
- 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-AA20, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- Hand Delivered/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA20, 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.

FOR FURTHER INFORMATION CONTACT: Sandy Comenetz, Executive Advisor to the Chief Operating Officer and Senior Deputy Director, (202) 414-3771, or Andra Grossman, Senior Counsel, (202) 343-1313 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed regulation and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.¹ FHFA was established to oversee the prudential operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (FHLBanks); and to ensure that they operate in a safe and sound manner; remain adequately capitalized; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and their respective authorizing statutes, as well as all rules, regulations, guidelines, and orders and carry out their missions through activities that are

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

authorized by their respective statutes and are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C 4511(b)(2)).

III. Proposed Regulation

Section 1105(e) of HERA amended section 1317(i) of the Safety and Soundness Act (12 U.S.C. 4517(i)) by requiring the Director of FHFA to establish, by regulation, an Office of the Ombudsman (Office). The Office is to be headed by an Ombudsman who is responsible for considering complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity on any matter relating to the regulation and supervision of a regulated entity. Section 1317(i) (12 U.S.C. 4517(i)) further provides that the regulation must specify the authority and duties of the Office. FHFA proposes this regulation to implement section 1317(i) (12 U.S.C. 4517(i)) by establishing the Office and setting forth the authorities and duties of the Ombudsman.

In developing this proposed regulation, FHFA considered the role, scope, and function of the ombudsman across the federal banking agencies and the rest of the federal government. FHFA found there was no one, uniform approach followed. The approach taken in this proposed regulation draws from these various practices.

The Office of Finance is a joint office of the FHLBanks that was established by a predecessor to FHFA. The Office of Finance is governed by a board of directors consisting of all of the FHLBank presidents and five independent members. Under the regulations of FHFA, the Office of Finance is subject to the same regulatory oversight authority and enforcement powers as are the FHLBanks and their respective directors,

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

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the FHLBanks and the Enterprises with respect to the FHLBanks’ cooperative ownership structure, liquidity mission, affordable housing and community development mission, capital structure, and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed regulation, the Director considered the differences between the FHLBanks and the Enterprises as they relate to the above factors. The Director believes that none of the unique factors relating to the FHLBanks warrants establishing different treatment under the proposed regulation. Nonetheless, the Director requests comments about whether it would be appropriate to include in a final rule any provisions relating to the differences between the FHLBanks and the Enterprises.

² 12 CFR 1273.4 and 1273.7.

³ 12 U.S.C. 4631(a) and 4636a(a).

IV. Section-by-Section Analysis

Section 1213.1 Purpose and Scope

Proposed § 1213.1 would provide that the purpose of the proposed part is to establish the Office under section 1317(i) of the Safety and Soundness Act (12 U.S.C. 4517(i)) and to set forth the authorities and duties of the Ombudsman. The proposed part would also apply to complaints and appeals regarding any matter relating to the regulation and supervision of any regulated entity or the Office of Finance. The proposed establishment of the Office would not alter or limit any other right or procedure associated with appeals, complaints, or administrative matters submitted by a person regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance under any other law or regulation.

Section 1213.2 Definitions

This proposed section would set forth definitions applicable to this part.

Business relationship would mean a relationship or potential relationship between a person and a regulated entity or the Office of Finance that involves the provision of goods or services. The term business relationship would not mean a relationship between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.

Director would mean the Director of FHFA or his or her designee.

FHFA would mean the Federal Housing Finance Agency.

Office of Finance would mean the Office of Finance of the Federal Home Loan Bank System.

Person would mean an organization, business entity, or individual that has a business relationship with a regulated entity or the Office of Finance, or that represents directly or indirectly the interests of a person that has a business relationship with a regulated entity or the Office of Finance. The term person would not include an individual borrower.

Regulated entity would mean the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, or any Federal Home Loan Bank. The term regulated entities would mean, collectively, the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, and the Federal Home Loan Banks.

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

Section 1213.3 Authorities and Duties of the Ombudsman

Proposed § 1213.3 would provide that the Office be headed by an Ombudsman. The Ombudsman would be required to consider complaints or appeals submitted by a regulated entity, the Office of Finance, or any person regarding any matter relating to the regulation and supervision of the regulated entity or the Office of Finance by FHFA.

In considering any complaint or appeal, the proposed section would authorize the Ombudsman to (i) conduct inquiries and make findings of fact and nonbinding recommendations to the Director concerning the complaint or appeal, and (ii) act as a facilitator and mediator for the resolution of the complaint or appeal. Proposed duties of the Ombudsman would be to (i) establish procedures for carrying out the functions of the

Office, (ii) establish and publish procedures for the submission of complaints and appeals, and (iii) report annually to the Director on the activities of the Office, or more frequently, as determined by the Director.

Section 1213.4 Complaints and Appeals by a Regulated Entity or the Office of Finance

Proposed § 1213.4 would provide that FHFA encourages informal resolution of matters in dispute between a regulated entity or the Office of Finance and FHFA. If a matter could not be resolved informally, a regulated entity or the Office of Finance may submit a complaint or appeal. As proposed, any regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance that is not a matter subject to appeal. Proposed § 1213.4 would provide that the Ombudsman may further define what matters are subject to complaint.

Proposed § 1213.4 would further provide that any regulated entity or the Office of Finance may submit an appeal in accordance with procedures established by the Ombudsman on any final written regulatory or supervisory conclusion, decision, or examination rating by FHFA. The proposed section also would provide that the Ombudsman may further define what matters are subject to appeal. Section 1213.4, as proposed would provide that for matters for which there is an existing avenue of appeal or for which there is another forum, and non-final decisions or conclusions may not be appealed to the Ombudsman. Such matters would include, but would not be limited to, appointments of conservators or receivers, preliminary examination conclusions, formal enforcement decisions, formal and informal rulemakings, Freedom of Information Act appeals, final FHFA decisions subject to judicial review, and matters within the

jurisdiction of the FHFA Inspector General. In addition, the proposed section would provide that the Ombudsman may further define what matters are not subject to appeal.

Finally, proposed § 1213.4 would provide that an appeal would not excuse a regulated entity or the Office of Finance from complying with any regulatory or supervisory decision while the appeal is pending. The proposed section would provide that the Director, upon written request, may relieve a regulated entity or the Office of Finance of the obligation to comply with a regulatory or supervisory decision or action while an appeal is pending.

Section 1213.5 Complaints by a Person

Proposed § 1213.5 would allow any person to submit a complaint in accordance with procedures established by the Ombudsman regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance. The proposed section also would provide that the Ombudsman may further define what matters are subject to complaints.

Section 1213.6 No Retaliation

Under proposed § 1213.6, neither FHFA nor any FHFA employee would be permitted to retaliate against a regulated entity, the Office of Finance, or a person for submitting a complaint or appeal. The proposed section would require the Ombudsman to receive and address complaints of retaliation and investigate the basis of the alleged retaliation. Upon completion of the investigation, the Ombudsman would report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

Section 1213.7 Confidentiality

Proposed § 1213.7 would require the Ombudsman to ensure that safeguards exist to preserve confidentiality. If a party requests that information and materials remain confidential, the Ombudsman would be required not to disclose the information and materials, without approval of the party, except to appropriate reviewing or investigating officials, or as required by law. The proposed section notes that the resolution of certain complaints (such as complaints of retaliation against a regulated entity or the Office of Finance) may not be possible if the identity of the party remains confidential and thus would require the Ombudsman to discuss with the party the circumstances limiting confidentiality.

Regulatory Impact

Paperwork Reduction Act

The proposed regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA hereby certifies that the proposed regulation is not likely to have a significant economic

impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 1213

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511(b)(2), 4517(i), and 4526, the Federal Housing Finance Agency proposes to amend Chapter XII of Title 12, Code of Federal Regulations, by adding a new part 1213 to subchapter A to read as follows:

PART 1213—Office of the Ombudsman

Sec.

1213.1 Purpose and scope.

1213.2 Definitions.

1213.3 Authorities and duties of the Ombudsman.

1213.4 Complaints and appeals by a regulated entity or the Office of Finance.

1213.5 Complaints by a person.

1213.6 No retaliation.

1213.7 Confidentiality.

Authority: 12 U.S.C. 4511(b)(2), 4517(i), and 4526.

§ 1213.1 Purpose and scope.

(a) Purpose. The purpose of this part is to establish within FHFA the Office of the Ombudsman (Office) under section 1317(i) of the Safety and Soundness Act (12 U.S.C. 4517(i)) and to set forth the authorities and duties of the Ombudsman.

(b) Scope.—(1) This part applies to complaints and appeals regarding any matter relating to the regulation and supervision of any regulated entity or the Office of Finance.

(2) The establishment of the Office does not alter or limit any other right or procedure associated with appeals, complaints, or administrative matters submitted by a person regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance under any other law or regulation.

§ 1213.2 Definitions.

For purposes of this part, the term:

Business relationship means a relationship or potential relationship between a person and a regulated entity or the Office of Finance that involves the provision of goods or services. The term business relationship does not mean a relationship between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.

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

FHFA means the Federal Housing Finance Agency.

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

Person means an organization, business entity, or individual that has a business relationship with a regulated entity or the Office of Finance, or that represents directly or indirectly the interests of a person that has a business relationship with a regulated entity or the Office of Finance. The term person does not include an individual borrower.

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

Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, and the Federal Home Loan Banks.

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

§ 1213.3 Authorities and duties of the Ombudsman.

(a) General. The Office shall be headed by an Ombudsman, who shall consider complaints or appeals submitted by a regulated entity, the Office of Finance, or any person regarding any matter relating to the regulation and supervision of the regulated entities or the Office of Finance by FHFA. In considering any complaint or appeal submitted under this part, the Ombudsman may:

(1) Conduct inquiries and make findings of fact and nonbinding recommendations to the Director concerning the complaint or appeal, and

(2) Act as a facilitator and mediator for the resolution of the complaint or appeal.

(b) Other duties. The Ombudsman shall:

(1) Establish procedures for carrying out the functions of the Office.

(2) Establish and publish procedures for the submission of complaints and appeals, and

(3) Report annually to the Director on the activities of the Office, or more frequently, as determined by the Director.

§ 1213.4 Complaints and appeals by a regulated entity or the Office of Finance.

(a) Informal resolution. FHFA encourages informal resolution of matters in dispute between a regulated entity or the Office of Finance and FHFA. If a matter cannot

be resolved informally, a regulated entity or the Office of Finance may submit a complaint or appeal, as appropriate, to the Ombudsman for consideration under procedures established by the Ombudsman.

(b) Complaints.—(1) General. Any regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman.

(2) Matters subject to complaint. A regulated entity or the Office of Finance may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance that is not a matter subject to appeal. The Ombudsman may further define what matters are subject to complaint.

(c) Appeals.—(1) General. Any regulated entity or the Office of Finance may submit an appeal in accordance with procedures established by the Ombudsman.

(2) Matters subject to appeal. A regulated entity or the Office of Finance may submit an appeal on any final written regulatory or supervisory conclusion, decision, or examination rating by FHFA. The Ombudsman may further define what matters are subject to appeal.

(3) Matters not subject to appeal. Matters for which there is an existing avenue of appeal or for which there is another forum, and non-final decisions or conclusions may not be appealed. Such matters include but are not limited to appointments of conservators or receivers, preliminary examination conclusions, formal enforcement decisions, formal and informal rulemakings, Freedom of Information Act appeals, final FHFA decisions subject to judicial review, and matters within the jurisdiction of the FHFA Inspector General. The Ombudsman may further define what matters are not subject to appeal.

(4) Effect of initiating an appeal. An appeal under this section does not excuse a regulated entity or the Office of Finance from complying with any regulatory or supervisory decision while the appeal is pending. The Director, upon written request, may relieve a regulated entity or the Office of Finance of the obligation to comply with a regulatory or supervisory decision or action while the appeal is pending.

§ 1213.5 Complaints by a person.

(a) General. Any person may submit a complaint in accordance with procedures established by the Ombudsman.

(b) Matters subject to complaint. A person may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance. The Ombudsman may further define what matters are subject to complaints.


§ 1213.6 No retaliation.

Neither FHFA nor any FHFA employee may retaliate against a regulated entity, the Office of Finance, or a person for submitting a complaint or appeal under this part. The Ombudsman shall receive and address complaints of retaliation. Upon receiving a complaint, the Ombudsman shall investigate the basis of the alleged retaliation. Upon completion of the investigation, the Ombudsman shall report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

§ 1213.7 Confidentiality.

The Ombudsman shall ensure that safeguards exist to preserve confidentiality. If a party requests that information and materials remain confidential, the Ombudsman shall not disclose the information and materials, without approval of the party, except to

appropriate reviewing or investigating officials, or as required by law. However, the resolution of certain complaints (such as complaints of retaliation against a regulated entity or the Office of Finance) may not be possible if the identity of the party remains confidential. In such cases, the Ombudsman shall discuss with the party the circumstances limiting confidentiality.


Edward J. DeMarco
Acting Director, Federal Housing Finance Agency.


Date