

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1251**

**RIN 2590-AA73**

**Housing Trust Fund**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Interim final rule; request for comments.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing an interim final rule setting forth requirements related to allocations by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the Enterprises) to the Housing Trust and Capital Magnet Funds created by the Housing and Economic Recovery Act of 2008. The rule implements a statutory prohibition against the Enterprises passing the cost of such allocations through to the originators of loans they purchase or securitize.

**DATES:** This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. FHFA will accept written comments on this interim final rule on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments on this Interim Final Rule, identified by regulatory identifier number “RIN 2590-AA73,” by any of the following methods:

- Agency Website: [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).

- Federal eRulemaking Portal: [www.regulations.gov](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](mailto:RegComments@fhfa.gov) to ensure timely receipt by the Agency. Please include “RIN 2590-AA73” in the subject line of the message.

- Courier/Hand Delivered: The hand delivery address is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590-AA73, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590-AA73, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Alfred M. Pollard, General Counsel, (202) 649-3050 (not a toll-free number), Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Comments**

FHFA invites comments on any aspect of the interim final rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, including any personal information you provide such as your

name, address, email address and phone number, on the FHFA internet website at [www.fhfa.gov](http://www.fhfa.gov). In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10:00 a.m. and 3:00 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

## **II. Background**

Section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as added by section 1131(b) of the Housing and Economic Recovery Act of 2008 (HERA), directs the Secretary of the Department of Housing and Urban Development to establish and manage a Housing Trust Fund (HTF) that is funded by amounts allocated by Fannie Mae and Freddie Mac and any other amounts appropriated, transferred, or credited to the HTF under any other provision of law. 12 U.S.C. 4568(a); see also id. at 4567(a). The purpose of the HTF is to provide grants to States “to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families” and “to increase homeownership for extremely low- and very low-income families.” Id. at 4568(a)(1).

Separately, section 1339 of the Safety and Soundness Act, as added by section 1131(b) of HERA, establishes the Capital Magnet Fund (CMF) within the U.S. Treasury as a special account within the Community Development Financial Institutions Fund. Id. at 4569(a). As with the HTF, the CMF is also funded by amounts allocated by Fannie Mae and Freddie Mac and any other amounts appropriated, transferred, or credited to it under any other provision of law. Id. at 4569(b); see also id. at 4567(a). Funds in the

CMF are available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for, and increase investment in, “the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families” and “economic development activities or community service facilities . . . which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.” Id. at 4569(c).

Though the HTF is administered by the Secretary of HUD and the CMF is administered by the Secretary of the Treasury, Fannie Mae and Freddie Mac are supervised by FHFA. See generally id., at 4501 et seq. The Director of FHFA has general regulatory authority over each Enterprise and is responsible for ensuring that the purposes of the Safety and Soundness Act, the Enterprises’ charter acts, and any other applicable law are carried out. Id. at 4511(b). The duties of the Director include ensuring that the operations and activities of each Enterprise foster liquid, efficient, competitive and resilient national housing finance markets, including activities relating to mortgages on housing for low- and moderate-income families; that each Enterprise complies with the Safety and Soundness Act and any rules, regulations, orders and guidelines issued under it or the Enterprises’ charter acts; and that the activities of each Enterprise and the manner in which they are carried out are consistent with the public interest. Id. at 4513(a)(1)(B)(ii), (iii) and (v). The Director is authorized to issue any regulations, guidelines or orders necessary to carry out the duties of the Director under the Safety and Soundness Act or the Enterprise charter acts and to ensure that the purposes of such acts are accomplished. Id. at 4526.

The Enterprises' allocation obligations to support the HTF and CMF (together, the Funds) and related requirements are set forth at section 1337 of the Safety and Soundness Act. Id. at 4567. That section addresses the amount the Enterprises are to set aside and allocate to the Secretaries of HUD and the Treasury each fiscal year, based on the unpaid principal balance of their total new business purchases, which are the single- and multi-family residential mortgage loans or re-financings acquired by the Enterprises and held in portfolio or that support securities, notes or other obligations which the Enterprises guarantee. The section further directs the Director to issue a regulation prohibiting an Enterprise from redirecting the costs of any required allocation to the originators of mortgages the Enterprise purchases or securitizes, addresses enforcement of Enterprise compliance with the section and any regulation, rule or order issued pursuant to it, and authorizes the Director temporarily to suspend allocations if the Director makes any finding among three set forth by statute. Id.

Pursuant to section 1337 and the Director's general regulatory authority, the Director has determined to issue an Interim Final Rule prohibiting each Enterprise from passing through the costs of allocations to originators of mortgages purchased or securitized by the Enterprise.

FHFA is issuing this rule as an Interim Final Rule with request for comments. Section 1337 requires the Director to issue a regulation regarding the prohibition against passing costs of the allocations required under the section to originators and how compliance with the requirements of the regulation and statute is to be enforced. The Interim Final Rule's substantive provisions are established by statute and the rule does not deviate from or add to the statutory requirements. The need for the rule at this time is

to support the implementation process that the Director will provide for the Enterprises to begin the process of setting aside and allocating monies for the Funds and to assure that the prohibition on pass through of costs accompanies the planning and deployment of funds. Further, the rule will support the development of regulatory oversight mechanisms to be put in place to assure compliance with the prohibition.<sup>1</sup>

## **Regulatory Impact**

### Paperwork Reduction Act

The interim final rule does not contain any information collection requirement that requires the approval of OMB 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 rule 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 rule's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the interim final rule under the Regulatory Flexibility Act. FHFA certifies that the Interim Final Rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

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<sup>1</sup> FHFA is issuing this Interim Final Rule with a request for comments to provide transparency on the prohibition and its implementation, though the Rule itself is not a legislative rule but is procedural and thus would be excepted from the normal notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3).

## **List of Subjects in 12 CFR Part 1251**

Administrative practice and procedure, Capital Magnet Fund, Government-sponsored enterprises, Housing Trust Fund, Reporting and recordkeeping requirements.

### **Authority and Issuance**

Accordingly, for the reasons stated in the Supplementary Information, under the authority of 12 U.S.C. 4567, the Federal Housing Finance Agency amends Chapter XII of Title 12 of the Code of Federal Regulations, as follows:

## **CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

### **SUBCHAPTER C—ENTERPRISES**

1. Add part 1251 to Subchapter C to read as follows:

## **PART 1251—CONTRIBUTIONS TO THE HOUSING TRUST AND CAPITAL**

### **MAGNET FUNDS**

Sec.

1251.1 Purpose.

1251.2 Definitions.

1251.3 Prohibition on pass-through of cost of allocation; enforcement.

1251.4 Submission of information.

**Authority:** 12 U.S.C. 1452(c), 1718(b), 4511(b), 4513(a), 4514(a), 4526(a), and 4567.

#### **§ 1251.1 Purpose.**

The purpose of this part is to implement a prohibition against an Enterprise redirecting the cost of any allocation to the Housing Trust Fund or the Capital Magnet Fund to originators of mortgages purchased or securitized by an Enterprise.

#### **§ 1251.2 Definitions.**

The following definitions apply to the terms used in and related specifically to this part. Definitions of other terms may be found in 12 CFR part 1201, General Definitions Applying to All Federal Housing Finance Agency Regulations:

Capital Magnet Fund means that Fund established at section 1339(a) of the Safety and Soundness Act, 12 U.S.C. 4569(a).

Housing Trust Fund means that Fund established by section 1338(a) of the Safety and Soundness Act, 12 U.S.C. 4568(a).

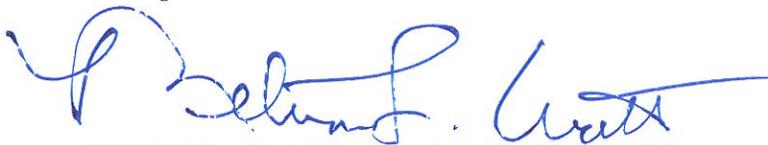
**§ 1251.3 Prohibition on pass-through of cost of allocation; enforcement.**

(a) In general. No Enterprise shall re-direct or pass through the cost of any allocation to the Housing Trust Fund or the Capital Magnet Fund required pursuant to section 1337(a) of the Safety and Soundness Act, 12 U.S.C. 4567(a), through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the Enterprise.

(b) Enforcement. Compliance by each Enterprise with the foregoing prohibition shall be enforced under subpart 3 of part B of the Safety and Soundness Act, 12 U.S.C. 4581-89.

**§ 1251.4 Submission of information.**

The Director may issue guidance, orders, or notices on compliance with section 1337 and this part by the Enterprises, which may include information submissions by the Enterprises.



Melvin L. Watt,  
Director, Federal Housing Finance Agency.

12/10/2014  
Date