

UNITED STATES OF AMERICA
FEDERAL HOUSING FINANCE AGENCY

**In Re: Information Submission with
Respect to Executive Compensation**

Order No. 2018-OR-FNMA-2

**ORDER ON INFORMATION SUBMISSION
WITH RESPECT TO EXECUTIVE COMPENSATION**

Background

Section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act (the Safety and Soundness Act) requires the Director of the Federal Housing Finance Agency (FHFA) to prohibit executive compensation at the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (the Enterprises), and the Federal Home Loan Banks (the Banks) (collectively, the regulated entities) that is not reasonable and comparable to compensation for employment in other similar businesses involving similar duties and responsibilities. That authority, as well as other statutory provisions related to compensation of executive officers of the regulated entities, is implemented by the Executive Compensation Rule at 12 CFR part 1230 (the Rule). The Rule applies to the regulated entities and, by reason of FHFA's general supervisory authority, to the Federal Home Loan Bank System's Office of Finance (OF).

To carry out its statutory obligations, FHFA must receive timely information from the regulated entities and OF with respect to executive compensation, including to enable prospective review of compensation actions for executive officers (as defined in the Rule). The Safety and Soundness Act authorizes FHFA to require the regulated entities, by order, to submit such reports on their management, activities, and operation as the Director considers appropriate. 12 U.S.C § 4514. This Order describes the information that must be submitted to FHFA under the Executive Compensation Rule, and supersedes the Order executed on November 24, 2014.

Order

In general

A regulated entity and OF shall provide, in a format suitable to FHFA, all relevant information needed to calculate the value of compensation intended to be provided to executive officers, including base pay, incentive compensation, severance, change-in-control compensation, retirement, perquisites, any other cash payments, and any other element of compensation that is specifically requested. Submission of incentive plans must include the associated goals and projected payments. Incentive compensation plan payments must be accompanied by the associated goals and achievement against the goals.

The following materials shall be provided by each regulated entity and OF to FHFA for review:

- (1) Resolutions and minutes, including supporting materials and related reports, from meetings of the board of directors or any committee responsible for compensation when the board or such committee takes any action regarding a compensation matter that affects executive officers;
- (2) With respect to executive officers, any proposed plans or agreements, and red-lined versions, if applicable, of the following types prior to adoption or amendment:
 - a. incentive compensation plans, including related goals;
 - b. severance plans, change-in-control agreements, and separation agreements such as a release of claims, waiver of repayment obligation, or acceleration of any award upon termination;
 - c. retirement plans, including pension plans, except that no submission is required for amendments to qualified retirement plans;
 - d. plans providing perquisites or other cash payments;
 - e. plans that apply principally to executive officers; and
 - f. individually negotiated agreements;
- (3) As applicable, the annual compensation report to Congress, both a draft prior to submission to Congress for FHFA review, and the final report as submitted;
- (4) A current organizational chart when changes occur affecting the status of executive officers;
- (5) The relevant market data supporting proposed changes in compensation with respect to executive officers; and
- (6) Such other related information as FHFA may request.

Payment of certain termination benefits

For submissions relating to payments to executive officers under a severance plan, change-in-control agreement, or separation agreement such as a release of claims, waiver of repayment obligation, or acceleration of any award upon termination, where such plan or agreement has not previously been reviewed and provided a non-objection or approval by FHFA in accordance with the Rule, a regulated entity and OF shall submit to FHFA:

- (1) Any relevant agreement or plan, amounts to be paid, any assumptions and calculations used to determine the amounts to be paid, any supporting comparability data or market practice information relied upon by the regulated entity or OF, and any other relevant information; and
- (2) Such other related information as FHFA may request.

For payments pursuant to the terms of a severance plan, change-in-control agreement, or separation agreement such as a release of claims, waiver of repayment obligation, or acceleration of any award upon termination that has previously been reviewed and provided a non-objection or approval by FHFA in accordance with the Rule, such previous non-objection or approval shall satisfy the Rule's advance notice required before a regulated entity or OF can "pay, disburse, or transfer" ... "any amounts under a severance plan, change-in-control agreement, or other separation agreement." 12 C.F.R. 1230.3.

Hiring or promotion of executive officers

For submissions relating to hiring or promotion of executive officers, or any change in an executive officer's title, role, or position, a regulated entity and OF shall submit to FHFA the following materials, as applicable:

- (1) Proposed compensation (if changing);
- (2) A description of the specific responsibilities of the position;
- (3) Compensation history of previous executives in similar positions at the regulated entity or OF for the previous twelve months;
- (4) Any comparability studies produced for the position and evaluated by the selecting official or board of directors or its designated committee, as applicable;
- (5) Any agreements related to compensation to be signed by the candidate;
- (6) A list identifying all plans, including retirement, incentive, and benefit plans that will be available to the candidate;
- (7) Current position of the candidate, and current compensation if the candidate is currently an employee of the requesting regulated entity or OF;
- (8) The offer letter to the candidate, if applicable; and
- (9) Such other related information as FHFA may request.

Incentive plans and payouts

For submissions relating to incentive plans and payouts with respect to executive officers, a regulated entity and OF shall submit to FHFA the following materials:

- (1) The details of the incentive compensation plans and all changes to these plans (including a clean and a red-lined version against the previous version of the plan), and, if applicable, the estimated payouts at threshold, target, and maximum achievement;

- (2) In the case of a submission of an incentive plan, or amendment to the goals, the associated performance goals and supporting documentation for the setting of the goals;
- (3) For Incentive Plan Payouts: all material information, data, assumptions, and calculations for the total dollar values of the payouts of any incentive compensation, including base salary used for calculation, any internal audit reviews of performance, any documentation demonstrating achievement of goals for short-term and long-term awards, and the calculation used on the deferred incentive payment; and
- (4) Such other related information as FHFA may request.

Submission deadlines

Any information to be submitted under this Order shall be provided in a timely fashion by each regulated entity and OF. Information submitted to FHFA related to a proposed compensation action, including board resolutions regarding such action, should be submitted at least four weeks in advance of the proposed action's effective date to be considered timely. If the requested information reports an event or action, such as minutes or resolutions, including supporting materials and related reports, produced by or submitted to a Board or committee, the information shall be submitted to FHFA within two weeks after becoming final. Where the Rule prescribes a time period, that time period governs. In addition:

- (1) Changes to compensation shall be submitted to FHFA 30 days prior to the planned change.
- (2) Termination packages shall be submitted to FHFA 30 days prior to the planned termination, and five business days before a termination for cause; however, if circumstances of the termination make those review periods impracticable, then an agreement may be entered into prior to review by FHFA provided that the agreement includes specific language informing the parties to the agreement that the agreement has not been reviewed by FHFA and may be subject to change by FHFA.
- (3) Hiring packages shall be submitted to FHFA not later than five business days prior to the date the official offer will be made to the candidate. If necessary, an offer may be made to an executive officer on a more expedited basis as long as specific language is inserted in the offer letter informing the candidate that the information has not been reviewed by FHFA, and may be subject to change by FHFA. If feasible, hiring packages should be submitted for review two weeks before the offer is to be made.
- (4) Incentive plan documents shall be submitted to FHFA no later than the end of the last month of the year prior to the start of the applicable plan year. For example, if the applicable plan starts in January of a given year, the proposed incentive plan shall be submitted to FHFA no later than the end of December of the prior year.
- (5) Incentive plan goals shall be submitted no later than one month after the beginning of the new fiscal year of the regulated entity or OF.

- (6) Proposed incentive payout packages shall be submitted to FHFA at least 30 days before the regulated entity or OF must take action in order that securities filings can be prepared and incentive payments paid.

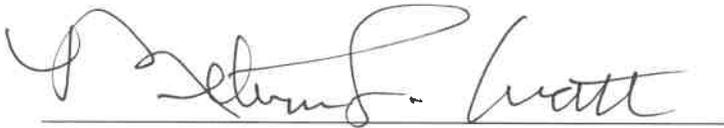
Any time period prior to an event or decision by which FHFA shall have received information as specified in this Order or in the Rule shall begin when all the information specified has been delivered to FHFA. Consistent with the Rule, as set forth at 12 CFR § 1230.3(e), during any review period established by this Order or the Rule, or any extension thereof, a regulated entity or the OF shall not execute the compensation action that is under review unless the Director provides written notice of approval or non-objection.

Redactions

Information submitted pursuant to this Order must be submitted without redactions or omissions, except as necessary to preserve particularized claims of attorney-client communication privilege, which must be identified and described simultaneously with the submission of the non-privileged material. FHFA may subsequently require the production of such information as determined to be necessary.

Effective Date

The foregoing Order is effective 30 days after issuance, and applies only to submissions on or after its effective date.



Melvin L. Watt
Director, Federal Housing Finance Agency

Date: 5/11/2018

Principal Federal Housing Finance Agency Contact

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