Public Comment on the Proposed Repeal of the Federal Home Loan Bank New Business Activities Regulation

Federal Housing Finance Agency
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Executive Summary

I support FHFA's objectives of reducing unnecessary administrative burden, preserving institutional flexibility, and enabling responsible innovation by the Federal Home Loan Banks. I do not support complete repeal of 12 CFR part 1272 unless FHFA establishes a proportional replacement for the regulation's core governance functions: early visibility into materially novel risks, attributable authorization, documented risk assessment, supervisory intervention before institutional embedding, and an examination-ready decision record.

The proposal relies heavily on informal early engagement and later examination. Those practices may be useful, but they are not institutionally equivalent to a defined notice architecture. A Bank may retain formal responsibility for a new activity while practical control over risk identification, vendor dependence, implementation, and corrective action becomes dispersed across operating units and external systems. FHFA should reduce fixed process costs without accepting a gap between its formal supervisory authority and its practical capacity to observe, intervene, correct, and account for new business activity.

I. Analytical Basis: Authority-Control Alignment

Institutional Authority and Governance Dynamics (IAGD) distinguishes recognized institutional authority from Governance Control: the practical and institutionally organized capacity to observe, direct, coordinate, constrain, monitor, correct, realign, and account for authority exercise. Authority-Control Alignment is assessed across locational, authorization, accountability, and corrective dimensions. This distinction is directly relevant to the proposed repeal. FHFA would retain legal supervisory authority, but complete repeal could weaken the structured mechanisms through which that authority becomes operational before a novel activity is fully implemented.

The appropriate policy question is therefore not whether the existing process has generated many formal rejections. It is whether the underlying control architecture remains necessary to keep novel activities visible, attributable, governable, and correctable.

II. Low Filing Frequency Does Not Establish Low Governance Value

FHFA explains that only two New Business Activity Notices were submitted during the past five years and that no notice was rejected during the past decade. It also states that qualifying notices apply only to activities involving material risks not previously managed by the Bank. Those facts may show that the trigger is narrow and that the current process can be streamlined. They do not establish that the notice function is valueless.

A low-frequency control can perform several high-value functions:

- It requires the Bank to classify an activity as institutionally novel and to identify the material risk that makes it novel.
- It creates an attributable record of who approved the activity, under what authority, and on what risk assessment.
- It establishes when FHFA received notice and what corrective or limiting authority remained available at that point.
- It permits intervention before contracts, technical infrastructure, vendor dependencies, operating routines, and member expectations become difficult or costly to reverse.
- It supports later examination by preserving the decision lineage rather than requiring examiners to reconstruct it after implementation.

The absence of a rejection may reflect successful early coordination, prudent Bank behavior, a high threshold, or deterrence of inadequately governed activities. The proposal should not treat a control as unnecessary solely because it rarely produces a visible prohibition.

III. Informal Engagement and Retrospective Examination Are Not Complete Substitutes

FHFA states that Banks typically brief the Agency early in product development and that examination staff would identify an activity through monitoring if early engagement did not occur. These mechanisms differ from a rule-defined notice requirement in three respects.

1. Voluntary engagement depends on the regulated institution's judgment about when a proposal is sufficiently novel or risky to warrant consultation.
2. Examination may occur after resources have been committed and after operational dependencies have become embedded.
3. Informal engagement may not produce a standardized record sufficient to identify authorization, retained rights, risk ownership, escalation thresholds, and corrective authority.

This is a potential Governance Drift problem: formal supervisory responsibility remains with FHFA while the practical location of risk identification and control may shift toward the Bank, its operating units, vendors, or technical systems. The result need not be misconduct. It may arise through ordinary layering and implementation. A proportional ex ante record helps keep delegated execution within a governable institutional boundary.

IV. Recommended Proportional Replacement

FHFA can reduce the burden of part 1272 while preserving its essential governance functions. I recommend that FHFA retain a narrow rule or binding supervisory framework with the following components.

Risk-triggered notification

Require notice only when an activity presents a material category of financial, operational, legal, technological, cybersecurity, counterparty, mission, or governance risk that the Bank has not previously managed at a comparable scale.

Attributable internal authorization

Identify the governing body or accountable officer approving the activity and certify the source and scope of the approving authority.

Concise authority-and-risk record

Require a short record identifying the activity, material novel risks, responsible decision authority, implementation owner, principal vendors or infrastructure dependencies, monitoring measures, escalation thresholds, retained correction rights, and exit or suspension procedures.

Tiered supervisory pathway

Distinguish among notice only, expedited review, limited pilot authority, and full prior review according to novelty, reversibility, external dependency, and potential safety-and-soundness impact.

Defined response period

Use a short, predictable period after which the Bank may proceed unless FHFA requests additional information, imposes limits, or places the activity in a higher review tier.

Post-launch monitoring

Require time-limited reporting for activities that involve material risks not previously managed, including whether key assumptions, controls, and dependencies remain accurate.

Correction and suspension authority

Preserve clear authority for FHFA to require modification, limit expansion, suspend an activity, or direct an orderly exit when emerging risks exceed the Bank's demonstrated control capacity.

Examination-ready retention

Require retention of the complete authorization, risk, implementation, and monitoring record so that FHFA can assess the activity without reconstructing its decision lineage.

Aggregate public accountability

Publish nonconfidential aggregate information about novel activity categories, supervisory pathways, and material corrective actions without disclosing proprietary information.

V. Responses to FHFA's Requested Considerations

Economic costs and benefits

Repeal would reduce preparation and review costs associated with a uniform formal notice. A tiered, short-form process could capture much of that benefit while preserving early visibility. The relevant economic comparison should include not only filing costs, but also the expected cost of late discovery, remediation, contract unwinding, operational disruption, and supervisory reconstruction when a materially novel risk is discovered after implementation.

Innovation and mission advancement

A proportional framework can support innovation by providing predictable decision pathways. A short-form notice and time-limited pilot can reduce uncertainty and permit responsible experimentation. Innovation is more durable when the approving authority, risk owner, implementation boundary, monitoring obligation, and exit pathway are defined before launch.

Safety and soundness

The strongest safety-and-soundness concern is not that every new activity is dangerous. It is that material novel risks may become institutionally embedded before FHFA has a complete, attributable, and actionable record. FHFA should preserve the ability to identify the activity early, understand its dependencies, and intervene before correction becomes disproportionately costly.

Conclusion

I recommend that FHFA not remove and reserve part 1272 without adopting a proportional replacement for its core notice, authorization, provenance, monitoring, and early-intervention functions. The Agency can reduce unnecessary paperwork while preserving practical supervisory control. The governing objective should be neither maximum prior control nor unrestricted institutional discretion, but governable innovation: new activity that remains visible, authorized, accountable, correctable, and aligned with the Bank System's public mission.

Respectfully submitted,

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References

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