FEDERAL HOUSING FINANCE AGENCY

ADVISORY BULLETIN

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FHFA ENFORCEMENT POLICY

PURPOSE

This advisory bulletin disseminates the Federal Housing Finance Agency (FHFA) policy for taking enforcement actions, when determined appropriate, to address compliance with laws, rules, or regulations; supervisory guidance, examination findings, or failure to comply with final agency orders; capital deficiencies; failure to meet prudential standards; and/or unsafe or unsound practices or conditions.

The enforcement policy provides FHFA guidance for internal agency purposes. FHFA is sharing the policy with the public as a means to promote supervisory transparency. The policy is not intended, does not, and may not be relied upon, to create rights, substantive or procedural, enforceable at law or in any administrative proceeding.

SCOPE

The enforcement policy is applicable to FHFA actions pertaining to the Federal Home Loan Banks, the Office of Finance, Fannie Mae, and Freddie Mac. Actions may take the form of informal enforcement actions; formal enforcement actions, such as cease-and-desist proceedings under 12 USC 4631; cease-and-desist orders and civil money penalties under 12 USC 4566(c)(1) and (c)(7), 12 USC 4581 and 4585, and 1430c(d); prompt corrective action directives under 12 USC 4611 *et seq.*; prudential management and operations standards orders under 12 USC 4513b; prompt supervisory responses under 12 CFR part 1777, subpart A; or some combination thereof.

The enforcement policy rescinds and replaces the FHFA Division of Federal Home Loan Bank Regulation Enforcement Policy (2012-DBR-01) issued in August 2012. The policy does not supersede or limit the applicability of any other FHFA regulation or policy that may provide more explicit guidance and direction, or establish supplemental procedures. The guidance provided in the enforcement policy does not remove or limit FHFA's discretion and judgment in

making decisions about whether to take an enforcement action, or determining which type of enforcement action may be appropriate in a given set of circumstances.

Advisory Bulletins communicate guidance to FHFA supervision staff and the regulated entities on specific supervisory matters pertaining to the Federal Home Loan Banks, the Office of Finance, Fannie Mae, and Freddie Mac. This bulletin is effective immediately upon issuance. Contact Kari Walter, Senior Associate Director, Office of Supervision Policy, or Kyle Roberts, Associate Director, Examination Standards Branch with comments or questions pertaining to this bulletin. This Advisory Bulletin is a Public document.

FEDERAL HOUSING FINANCE AGENCY
STATEMENT OF POLICY

May 2013

Public Document

FEDERAL HOUSING FINANCE AGENCY ENFORCEMENT POLICY

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Title: FEDERAL HOUSING FINANCE AGENCY ENFORCEMENT POLICY

I. OVERVIEW AND GENERAL POLICY

Effective supervision of the Federal Home Loan Banks (the Banks), Fannie Mae and Freddie Mac (the Enterprises) (collectively, the regulated entities) and the Office of Finance (OF) requires clear communications between the Federal Housing Finance Agency (FHFA) and the senior management and board of directors of the regulated entities and the OF. Once problems or weaknesses are identified, the senior management and board of directors of the regulated entity or the OF are expected to correct them promptly and within specified timeframes. FHFA's goal is for problems and weaknesses to be identified and addressed at an early stage, before they develop into more serious supervisory issues or adversely affect a regulated entity's or the OF's performance or condition or ability to carry out its housing finance mission. Enforcement actions are a mechanism through which FHFA communicates both supervisory expectations and requirements to regulated entities and the OF regarding corrective action to address problems and weaknesses that remain unaddressed through supervisory processes.

FHFA examiners formally document the findings and conclusions of supervisory activities. FHFA considers the actions a regulated entity or the OF takes or commits to take in response to FHFA findings and conclusions in determining whether an enforcement action is warranted and, if so, the severity of the action. FHFA will also take into account measures that may be needed in the future to address the regulated entity's or the OF's deficiencies and to address developments likely to affect the safe and sound operations of the regulated entity or the OF. This policy provides guidance in selecting the action or combination of actions best suited to correct the regulated entity's or the OF's problems and identifies the considerations made in determining the appropriate supervisory response, including exceptions to the policy. If a regulated entity or the OF fails to take appropriate and timely corrective action to address supervisory concerns, then FHFA's policy is to pursue increasingly severe enforcement actions to ensure proper and timely remediation. FHFA documents decisions regarding enforcement actions.

The policy provides guidance in the application of enforcement authority in a manner that is tailored to specific circumstances and is best suited to accomplish short-term and long-term corrective actions. The particular set of facts and circumstances at a given regulated entity or the OF at a particular point in time will guide FHFA's judgment about whether an enforcement action is warranted, and, if so, what type of enforcement action is appropriate. The guidance provided in the policy, however, does not remove FHFA's discretion in its exercise of enforcement authority in line with the considerations outlined in this policy.

II. TYPES OF ENFORCEMENT ACTIONS

Enforcement actions fall into two broad categories: informal and formal. (See Appendix A for detailed description of informal and formal enforcement actions.)

A. Informal Enforcement Actions

Informal enforcement actions include:

- (i) commitment letters;
- (ii) board resolutions; and,
- (iii) memoranda of understanding.

FHFA uses informal enforcement actions to obtain written commitments from a regulated entity's or the OF's board of directors to correct identified problems and weaknesses to FHFA's satisfaction and within specified timeframes. Agreement to an informal action is a written record of the board's commitment to correct problems within specified timeframes in circumstances in which the problem, if left unaddressed, could adversely affect the regulated entity's or the OF's performance, condition, or ability to carry out its housing finance mission.

B. Formal Enforcement Actions

Formal enforcement actions against a regulated entity or the OF include:

- (i) orders within the meaning of 12 USC 4631;
- (ii) written agreements;
- (iii) capital directives under 12 USC 4618;
- (iv) orders to enforce Enterprise housing goals-related compliance under 12 USC 4566(c)(1), (c)(7) and 12 USC 4581 and 4585;
- (v) orders to enforce Bank housing goals-related compliance under 12 USC 1430c(d);
- (vi) Prompt Corrective Action (PCA) directives under 12 USC 46 Subchapter II[1]; and,
- (vii) notices and orders to take corrective action pursuant to prudential management and operations standards under 12 USC 4513b.

Formal enforcement actions are generally taken to address the most serious supervisory problems, or shortcomings that may have not been properly remediated through other means within an appropriate timeframe. Formal enforcement actions may also contain more high-priority requirements than informal enforcement actions, and they are disclosed to the public. There is also a process available to FHFA to enforce certain formal actions in federal court. FHFA's formal enforcement authority is described below.

[1] *See* Appendix B for a description of mandatory and discretionary actions under PCA.

1. Enforcement Actions under 12 USC 4631 and 12 USC 4632

Formal enforcement actions include cease-and-desist orders under 12 USC 4631. These types of actions are available when a regulated entity or the OF engages in an unsafe or unsound practice; or is violating, has violated, or there is reasonable cause to believe is about to violate a law, rule, regulation, or order, or any condition imposed in writing in connection with the granting of an application or other request by the regulated entity or the OF, or any written agreement entered into with FHFA. A cease-and-desist order can be issued, either pursuant to a notice of charges or by consent of the regulated entity or the OF[2]. In addition to requiring a regulated entity or the OF to take corrective measures to remedy a violation of law or an identified problem or weakness within an appropriate timeframe as specified in the cease-and-desist order, formal enforcement authorities under 12 USC 4631 include, under certain circumstances, the authority to require a regulated entity or the OF to:

- (i) make restitution or provide reimbursement, indemnification, or guarantee against loss;
- (ii) seek restitution, obtain reimbursement, indemnification, or guarantee against loss;
- (iii) restrict growth;
- (iv) dispose of a loan or other asset involved in the practice or violation;
- (v) rescind agreements or contracts;
- (vi) employ qualified officers or employees; and
- (vii) take other action FHFA determines to be appropriate.

If FHFA determines that it is necessary to protect the regulated entity or the OF against ongoing or expected harm, pursuant to 12 USC 4632, FHFA may issue a temporary cease-and-desist order pending the resolution of a final cease-and-desist order.

As discussed below, FHFA will consider a cease-and-desist proceeding regardless of a regulated entity's or the OF's composite rating or capital level when the regulated entity or OF is experiencing:

- (i) problems or weaknesses in its systems and controls;
- (ii) insider abuse;
- (iii) violations of law or compliance problems;
- (iv) material noncompliance with prior commitments to take corrective action; or
- (v) a failure to maintain satisfactory books and records or provide examiner access to books and records when, as a result, FHFA is unable to determine the true financial condition of the regulated entity or the OF.

[2] A cease-and-desist order issued with consent of the regulated entity or the OF through its board of directors is termed a "consent order." Cease-and-desist orders and consent orders are legally indistinguishable in their effects.

2. Written Agreements

A written agreement is a bilateral document signed by the board of directors on behalf of the regulated entity or the OF and an authorized FHFA official. Like a consent order, its provisions are set out in article-by-article form and prescribe those restrictions, corrective and remedial measures necessary to correct deficiencies or violations in the regulated entity or the OF. A violation of the terms of a written agreement can form the basis for a cease-and-desist proceeding under 12 USC 4631, as well as assessing civil money penalties against directors, officers and other entity-affiliated parties. Written agreements may be enforced through a cease-and-desist proceeding; however, unlike a consent order, written agreements are not enforceable through the federal court system. Another important difference between a written agreement and a consent order is that willful violation of a consent order may be used as grounds for appointment of a conservator or receiver while a willful breach of a written agreement, by itself, may not.

3. Prompt Corrective Action Directives and Related Actions

Non-capital-related actions

Prompt Supervisory Responses (PSR) are formalized in 12 CFR 1777, subpart A, adopted by the Office of Federal Housing Enterprise Oversight with respect to the Enterprises, and would also be usable with respect to the Banks under FHFA's general supervisory authority. These regulatory provisions form a non-capital-based regime (which may include capital issues) for escalating warnings to the Enterprises prior to the initiation of formal enforcement action. A PSR provides a clear message that an institution's weaknesses have risen to a level where a range of enumerated options are possible short of a formal enforcement action, but as well that formal action may be forthcoming if concerns are not addressed. The PSR provides a supplement to the informal process to heighten the awareness of the severity of agency concerns, and may lead to a "show cause" requirement.

Capital-related actions

Prompt Corrective Action (PCA) actions are triggered by a regulated entity's capital category as defined in 12 USC 4614 and 12 CFR 1229.[3] Those categories are *adequately capitalized, undercapitalized*, *significantly undercapitalized*, or *critically undercapitalized*. Depending on a regulated entity's PCA capital category, certain restrictions and actions are imposed by operation of law.[4] Discretionary PCA actions include the issuance of directives that impose actions or

[3] 12 CFR 1229 pertains only to the Banks, not the Enterprises. FHFA suspended capital classifications of Fannie Mae and Freddie Mac after putting them into conservatorship in September 2008.
[4] See, for example, 12 USC 4615 (for *undercapitalized* regulated entities, a mandatory capital restoration plan, restrictions on capital distributions, and restrictions on growth); 12 USC 4616 (for *significantly undercapitalized* regulated entities, mandatory capital restoration plan, restrictions on capital distributions, and other actions that may

restrictions permitted or otherwise required under 12 USC 4611 *et seq*. and 12 CFR 1229. Except in rare instances, FHFA provides prior notice of intent to issue a PCA directive; however, there is no provision for a hearing for PCA directives.[5]

For regulated entities that are *undercapitalized* or *significantly undercapitalized,* FHFA may use a PCA directive rather than, or in addition to, a section 4631 enforcement action. PCA directives are an important tool when there are concerns that the regulated entity's problems may develop into serious supervisory issues that threaten viability, and FHFA anticipates that it may be necessary to exercise an early resolution option in the future. Failure to submit or implement a capital restoration plan required by a PCA directive is a ground for conservatorship or receivership. Thus, FHFA will consider issuing a PCA directive in such situations, and it may consider an order or written agreement if that would better achieve the purposes of prompt corrective action. Similarly, PCA directives may be appropriate in cases where the need for prompt action is present.[6]

For regulated entities that are *critically undercapitalized*, FHFA will consider whether statutory grounds have been met for the discretionary appointment of a conservator or the discretionary or mandatory appointment of a receiver, and determine the appropriate course of action.

When a *undercapitalized* or *significantly undercapitalized* regulated entity is already subject to a formal enforcement action under section 4631, FHFA may choose to: (i) modify the section 4631 document to reflect any additional requirements deemed necessary in view of the regulated entity's condition and capital category; (ii) replace the existing action with a PCA directive; or (iii) impose a PCA directive while also maintaining the existing enforcement action against the regulated entity. Whatever option is chosen, mandatory PCA restrictions applicable to such regulated entities apply. When a *critically undercapitalized* regulated entity is already subject to a formal enforcement action under section 4631, FHFA will consider whether statutory grounds have been met for the discretionary appointment of a conservator or receiver, or mandatory appointment of a receiver, and determine the appropriate course of action.

FHFA may also impose more severe limitations if the agency determines that the regulated entity: (i) does not submit an acceptable capital restoration plan within the applicable time period; (ii) does not make good faith, reasonable efforts to comply with the capital restoration

include dismissal of directors or executive officers); and 12 USC 4617 (for *critically undercapitalized* regulated entities, receivership if specified statutory conditions are met).

[5] See Appendix B for a description of PCA provisions.

[6] This enforcement policy outlines the PCA requirements for FHFA to address capital deficiencies at the regulated entities. 12 USC 4614 includes conservatorship as a PCA restriction applicable to the Enterprises. FHFA's Office of General Counsel has determined that the Agency's PCA requirements relating to the Enterprises are satisfied by the conservatorships entered into in 2008, as well as the Preferred Stock Purchase Agreement (PSPA) that has been in place for each Enterprise throughout its conservatorship. Accordingly, while FHFA may elect to take additional action to address capital deficiencies, PCA does not impose any requirement for further action during the pendency of the conservatorships. Regardless of the suspension of ratings and changes to the PSPAs over time, the conservatorships satisfy the Agency's PCA requirements with respect to the Enterprises.

plan; or (iii) with respect to *undercapitalized* or *significantly undercapitalized* regulated entities, that the use of more severe measures is necessary to carry out the purposes of prompt corrective action. FHFA will consider imposing these discretionary PCA actions when doing so is consistent with the purpose of 12 USC 4611 *et seq*.

4. Capital Reclassification Based on Other Supervisory Criteria

Under 12 USC 4614(c), FHFA may reclassify a regulated entity at any time if it determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital, the value of pledged collateral has decreased significantly, or the value of the property subject to mortgages held by the regulated entity (or securitized in the case of an Enterprise) has decreased significantly. FHFA may reclassify a regulated entity if, after notice and an opportunity for hearing, FHFA determines that the regulated entity is in an unsafe or unsound condition; or pursuant to 12 USC 4631(b) FHFA determines the regulated entity is engaging in an unsafe or unsound practice.

In addition, FHFA may (i) reclassify an *adequately capitalized* regulated entity as an *undercapitalized* regulated entity; (ii) reclassify an *undercapitalized capitalized* regulated entity as a *significantly undercapitalized* regulated entity; or (iii) reclassify a *significantly undercapitalized capitalized* regulated entity as a *critically undercapitalized* regulated entity.

5. Orders Requiring Compliance with Prudential Management and Operations Standards (PMOS)

Under 12 USC 4513b, FHFA has adopted a number of prudential standards as guidelines.[7] If FHFA determines that a regulated entity fails to meet any of the prudential management and operations standards established as guidelines, FHFA may require the regulated entity to submit an acceptable corrective plan that specifies the actions the regulated entity will take to correct the deficiency and the time within which each action will be taken.[8] If the regulated entity is undercapitalized, the corrective plan may be part of the capital restoration plan described above.

If a regulated entity does not file a timely, acceptable corrective plan, or fails in any material respect to implement it, FHFA will provide to the regulated entity a written notice of intent to issue an order requiring the regulated entity to correct the deficiency. The order may include other prohibitions and requirements.[9] A determination that the regulated entity is not in compliance with an approved plan must be supported by a statement of reasons explaining how the regulated entity failed to comply and why a notice of intent to issue an order is being issued. After the entity has an opportunity to respond, FHFA may order the regulated entity to take corrective action that FHFA concludes will better carry out the purposes of 12 USC 4513b.

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[7] 12 CFR Part 1236 Appendix.

[8] Under the statute, FHFA must require such a plan if the violated standards were established as regulations.

[9] See 12 CFR 1236.5(a)(1)-(6) (*e.g.*, prohibit growth; prohibit payment of dividends; prohibit redemption or repurchase of capital stock; and require increase in retained earnings).

FHFA must also take certain additional actions against a regulated entity that has not corrected a deficiency if the regulated entity experienced extraordinary growth (as defined in the regulation or guideline) over the prior 18 months.

Unlike PCA, which is triggered by capital categories, the prudential management and operations standards process enables FHFA to require regulated entities to address problems in their operations regardless of the capital levels of the regulated entity. In addition, the prudential management and operations standards order process enables FHFA to take a formal action (the PMOS order) in response to the regulated entity's failure to comply with the corrective plan required by FHFA.

6. Orders Enforcing Housing Goals-Related Compliance

With respect to the Enterprise housing goals established under 12 USC 4562(a) and 4563(a)(1), if FHFA requires an Enterprise to submit a housing plan and the Enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, FHFA may issue a cease-and-desist order in accordance with 12 USC 4581, impose civil money penalties in accordance with 12 USC 4585, exercise other enforcement authority or seek other appropriate actions as provided in 12 USC 4566(c)(1) and (c)(7). In addition, under 12 USC 4581 and 4585, FHFA may issue a cease-and-desist order or impose civil money penalties, respectively, if an Enterprise fails to submit a required report under the housing goals.

With respect to the Bank housing goals established under 12 USC 1430c, the monitoring and enforcement requirements of 12 USC 4566 apply to the Banks in the same manner and to the same extent that the requirements of that section apply to the Enterprises. See 12 USC 1430c(d). FHFA may issue a cease-and-desist order in accordance with 12 USC 4581, impose civil money penalties in accordance with 12 USC 4585, or exercise other enforcement authority or seek other appropriate actions as provided in 12 USC 4566(c)(1) and (c)(7).

III. DETERMINING SEVERITY OF ENFORCEMENT ACTIONS

A. General

Enforcement actions should be designed to address, within specified timeframes, identified risks and deficiencies. The enforcement actions will also lead to specific actions to be taken in the event the regulated entity or the OF fails to correct the deficiencies or complete the agreed-upon corrective actions. The severity of the enforcement action is based on several factors. These include:

(i) the overall condition of the regulated entity or the OF (both current and projected);

(ii) the composite rating of the regulated entity or the OF;
(iii) the nature, extent, and severity of the regulated entity's or the OF's problems and weaknesses;
(iv) whether the regulated entity's or the OF's board and management demonstrate the commitment and ability to correct the identified problems and weaknesses within an appropriate time frame;
(v) prior supervisory communications and the regulated entity's or the OF's efforts to address deficiencies;
(vi) outstanding enforcement actions and the status of the regulated entity or OF (*i.e.*, whether the regulated entity or the OF is already subject to an enforcement action or is in conservatorship or receivership); and
(vii) such other judgment factors that fall within the scope of prudential supervisory authority.

These factors will guide FHFA's decisions as to whether it is appropriate in a given situation to take an enforcement action and the type of enforcement action that is appropriate. In situations where a regulated entity or the OF has failed to comply with an enforcement action within a specified period of time, FHFA will determine the appropriate course of action under the circumstances to respond to the failure. For example, FHFA may consider the use of alternative enforcement actions and enforcing a formal prior action in federal court.

B. Regulated Entities and the OF with Composite Ratings of "1" or "2"

For regulated entities or the OF with a composite rating of "1" or "2," examiners should obtain commitments from the regulated entity's or the OF's senior management and board of directors to correct problems identified in Reports of Examination or other documents or otherwise brought to the regulated entity's or the OF's attention. The examiner-in-charge (EIC) should determine the appropriate measures (*e.g.*, oral or written assurances, responses to examination findings, correspondence, or action already taken) adequate to address supervisory concerns.

C. Regulated Entities and the OF with Composite Rating of "3"

When considering enforcement actions for a regulated entity or the OF with a composite rating of "3," FHFA will assess:

(i) the overall condition and outlook for the regulated entity or the OF;
(ii) risk profile trends;
(iii) record of compliance with previous criticisms or supervisory actions; and
(iv) the degree of confidence in the ability and willingness of management and the board to correct all identified deficiencies in a timely manner and return the regulated entity or the OF to a safe and sound condition.

FHFA may determine that an enforcement action is not necessary when, for example, the regulated entity or the OF has strong management, effective board oversight, and circumstances indicate that the necessary remedial measures are imminent. Alternatively, FHFA may determine that an enforcement action is necessary for a regulated entity or the OF rated "3" when, for example, the regulated entity or the OF has weak management or a less than satisfactory management rating, and where there is uncertainty about management's and the board's ability or willingness to take appropriate corrective measures. In addition, if the "3" rating continues for two consecutive examinations following the regulated entity or the OF entering into an informal enforcement action, FHFA will consider using a formal action and determine whether, under the circumstances, a formal action is not necessary. The particular set of facts and circumstances at a regulated entity or the OF with a composite rating of "3" will guide FHFA's judgment in making decisions about whether to take an enforcement action, and choosing the type of enforcement action.

D. Regulated Entities and the OF with Composite Rating of "4"

A regulated entity or the OF with a composite rating of "4" exhibits severe weaknesses in multiple respects. When deciding whether an enforcement action would be warranted for a regulated entity or the OF with a composite rating of "4" FHFA will consider the particular facts and circumstances of the regulated entity's or the OF's condition (including its capital levels), operations, outstanding enforcement actions, and status (*i.e.*, whether the regulated entity or the OF is in conservatorship or receivership). A determination not to take an enforcement action against a regulated entity or the OF with a composite rating of "4" must be made by the Deputy Director for the regulated entity or the OF, and documented in the FHFA electronic record system.

E. Regulated Entities and the OF with Composite Rating of "5"

A regulated entity or the OF with a composite rating of "5" exhibits unsafe or unsound practices or conditions. When deciding which enforcement action would be warranted for a regulated entity or the OF with a composite rating of "5" FHFA will consider the particular facts and circumstances of the regulated entity's or the OF's condition (including its capital levels), operations, outstanding enforcement actions, and status (*i.e*., whether the regulated entity is in conservatorship or receivership). A determination not to take a formal enforcement action against a regulated entity or the OF with a composite rating of "5" must be made by the Deputy Director for the regulated entity or the OF, and documented in the FHFA electronic record system.

F. Problems or Weaknesses

Independent of a regulated entity's or the OF's composite rating, financial condition, and the ability or cooperation of the board and management, FHFA may take an enforcement action to address the following circumstances:

(i) The regulated entity or the OF is experiencing problems or weaknesses in its systems, controls, internal audit programs, operating policies, methods of operations, or management information systems, but these problems have not yet resulted in a change of rating or are not reflected in the regulated entity's or the OF's financial performance or condition;
(ii) Members of senior management or the board are involved in insider abuses, whether or not the regulated entity or the OF is immediately harmed;
(iii) The regulated entity or the OF is not in compliance with laws, regulations, or supervisory requirements;
(iv) The regulated entity or the OF has disregarded, refused, or been unable to respond appropriately to supervisory efforts to correct identified problems or weaknesses;
(v) The regulated entity or the OF has failed, refused, or been unable to maintain appropriate books and records, has attempted to place unreasonable limitations on how, when, or where FHFA examinations are conducted, or has imposed limits or restrictions on examiner access to personnel, books, and records, and as a result, FHFA examiners are unable to determine the regulated entity's or the OF's true condition;
(vi) The regulated entity or the OF is not in compliance with specific commitments made to FHFA to correct problems identified by FHFA, or with an enforcement action; or
(vii) Such other judgment factors that fall within the scope of prudential supervisory authority.

FHFA will consider the severity, significance and persistence of identified risks and deficiencies at a regulated entity or the OF when choosing the appropriate action to take.

IV. CONSERVATORSHIP AND RECEIVERSHIP

Under 12 USC 4617(a)(4), FHFA must place a regulated entity into receivership when: (1) the assets of the regulated entity are, and during the preceding 60 days have been, less than its obligations; or (2) the regulated entity is not, and during the preceding 60 days has not been, generally paying its obligations as they become due.

Under 12 USC 4617(a)(2) and (3), FHFA may place a regulated entity into conservatorship or receivership for the purpose of reorganizing, rehabilitating, or winding up the affairs of the regulated entity when:

(i) the assets of the regulated entity are less than its obligations;
(ii) there is substantial dissipation of assets or earnings due to violation of law or unsafe or unsound practice;
(iii) the regulated entity is in an unsafe or unsound condition to transact business;

(iv) the regulated entity willfully violates a final cease-and-desist order;
(v) the regulated entity conceals its books, papers, records or assets;
(vi) the regulated entity is likely to be unable to pay its obligations in the normal course of business;
(vii) the regulated entity has incurred, or is likely to incur losses that will deplete all or substantially all of its capital, and there is no prospect for the regulated entity to become adequately capitalized;
(viii) there are violations of law or regulation, or an unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings, or weaken the condition of the regulated entity;
(ix) the board of directors or shareholders consent to the appointment;
(x) the regulated entity is undercapitalized or significantly undercapitalized and either has no reasonable prospect of being adequately recapitalized, fails to become adequately recapitalized, fails to submit a timely, acceptable capital restoration plan, or materially fails to implement such a plan after FHFA approves it;
(xi) the regulated entity is critically undercapitalized; or
(xii) the U.S. Attorney General notifies the Director in writing that the regulated entity has been found guilty of a criminal offense involving money laundering.

The facts and reasoning on which the conservatorship or receivership is based must be well supported and documented. In some instances, prior enforcement actions will have addressed the supervisory concerns at an earlier stage (*e.g.,* when the regulated entity first became undercapitalized or when FHFA required the regulated to correct unsafe and unsound practices in an enforcement action) and will appear in the examination workpapers and FHFA's system of record. Additional documentation (including examination workpapers) must reflect that the applicable bases for FHFA's actions have been satisfied.

Conservatorship does not preclude other enforcement actions; however, the conservator's broad statutory powers may provide FHFA with more efficient means to address problems than traditional enforcement tools. When a regulated entity is placed into conservatorship or receivership, FHFA succeeds to the rights of the stockholders, officers, and directors, as well as title to the regulated entity's books, records, and assets. FHFA as conservator may take immediate action, consistent with applicable law, to direct or restrict the activities at the regulated entity, including the activities of the board of directors and executive management. In addition, the conservator or receiver is not subject to most mandatory PCA requirements that would apply to an undercapitalized, significantly undercapitalized, or critically undercapitalized regulated entity that was not placed into conservatorship or receivership, because those requirements are superseded by the conservator's or receiver's powers and responsibilities, including, in the case of a conservator, to put the regulated entity in a sound and solvent condition, and to carry on its business and preserve and conserve its assets, and in the case of a receiver, to liquidate the regulated entity, which may include transferring assets to a limited life regulated entity.

V. ASSESSING COMPLIANCE WITH ENFORCEMENT ACTIONS

Early assessment by FHFA of a regulated entity's or the OF's efforts to comply with an enforcement action will further timely compliance with the applicable requirements. FHFA personnel should perform on-site activities and off-site monitoring necessary to assess the regulated entity's or the OF's compliance with the enforcement action. These activities should occur on a schedule commensurate with the nature of the terms and requirements of the enforcement action.

A determination of compliance can be achieved in an enforcement action only after the regulated entity or the OF has adopted, implemented, and adhered to all of the corrective actions required by FHFA and FHFA has verified that the regulated entity or the OF has complied with all applicable requirements. FHFA may defer validation of corrective actions until the regulated entity's or the OF's internal audit function or other independent function has conducted an independent review of the actions. A regulated entity or the OF generally should not be considered in compliance with a requirement in an enforcement document based solely on progress or a good faith effort toward complying with the requirement.

Requirements for which the regulated entity or the OF has not achieved compliance fall into two categories. The first category is where the regulated entity or the OF has begun the implementation of corrective actions but sufficient time has not passed for FHFA to verify that the actions have been fully implemented and are effective in addressing the regulated entity's or the OF's problems. In these situations FHFA would expect management and the board to continue to monitor and test the regulated entity's or the OF's progress to ensure that corrective actions are fully implemented, adhered to, and effective.

The second category is where additional action on the part of the regulated entity or the OF, its board, and management is required. This includes, but is not limited to, situations where the regulated entity or the OF has:

- (i) failed to adopt policies, procedures, and systems within required time frames;
- (ii) failed to adopt policies, procedures, and systems that address all requirements;
- (iii) failed to comply with immediately effective requirements;
- (iv) failed to cease prohibited activities; or
- (v) failed to fully implement or adhere to corrective actions.

VI. MODIFICATION OR TERMINATION OF ENFORCEMENT ACTIONS

Noncompliance with the enforcement action may be grounds for modifying an existing enforcement action, taking a more severe enforcement action or, in appropriate cases, placing the regulated entity into conservatorship or receivership.

The FHFA Director has the authority to terminate all or part of an enforcement action. In general, an enforcement action should not be terminated until the regulated entity or the OF has complied with all of the articles in the document. However, there may be some limited exceptions where termination of an enforcement action before the regulated entity or the OF achieves compliance with all articles in the document may be appropriate. This may occur in cases where, for example, a regulated entity or the OF has complied with all of the material requirements, and the articles in noncompliance have become outdated or superseded by subsequent events and circumstances. With regard to PMOS orders, FHFA's PMOS rule describes the procedural mechanisms available to a regulated entity for seeking a modification or rescission of an order.

VII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

A. Disclosures Required by Law

FHFA is required by 12 USC 4639 to publicly disclose certain types of agency actions. FHFA must make available to the public any written agreement or other written statement for which a violation may be redressed by the Director, or any modification or termination thereof unless the Director determines that public disclosure would be contrary to the public interest; any final order that is issued with respect to any administrative enforcement proceeding; and any modification to or termination of any final order.

FHFA is not required by law to disclose temporary orders to cease-and-desist or any informal enforcement actions; however, FHFA is required to include the findings and results of annual on-site examinations of the regulated entities in the agency's annual report to Congress required by 12 USC 4521(a)(2). The FHFA annual report also includes a summary of the findings and results of the annual examination of the OF. Information not made public by FHFA in either the annual report or formal enforcement action remains confidential and must not be disclosed by FHFA, any regulated entity or the OF, or their agents or employees except as permitted by law.

Confidential supervisory information supporting an enforcement action, whether a formal or informal action, may not be disclosed unless formally authorized by the FHFA Director or otherwise in accordance with agency policy. This prohibition against disclosure includes, but is not limited to, Reports of Examination, examination workpapers, information prepared for FHFA by the regulated entity or the OF, and documentation relating to compliance with the enforcement action.

B. Discretionary FHFA Disclosure

FHFA Director has authority to disclose information and will consider public disclosures beyond those required by law on a case-by-case basis, where the Director determines that disclosure would be in the public interest.

C. Requirements for Disclosure by Regulated Entities and the OF

Disclosures described in paragraphs A and B above refer only to FHFA's required or discretionary disclosures. Nothing in either paragraph is intended to require any regulated entity or the OF to disclose information or material legitimately privileged from disclosure, nor do they relieve any regulated entity or the OF of independent obligations to make required disclosures under the various securities laws and related regulations, or any other relevant statutes or obligations. Regulated entities or the OF may not disclose actions of FHFA absent approval of FHFA, with due consideration to the nature of the action and other legal requirements.

VIII. OVERSIGHT

In conjunction with supervisory and examination planning activities, the Deputy Directors for the Divisions of Bank Regulation and Enterprise Regulation should periodically review all outstanding enforcement actions, information on enforcement action trends, and the ratings assigned to their respective regulated entities and the OF.

EFFECTIVE DATE

This Policy is effective May 31, 2013; and rescinds and replaces FHFA Division of Federal Home Loan Bank Regulation Enforcement Policy (2012-DBR-01).

APPENDIX A

INFORMAL AND FORMAL ENFORCEMENT ACTIONS

INFORMAL ACTIONS

Commitment Letters and Board Resolutions

A commitment letter is a document signed by the regulated entity's or the OF's board of directors on behalf of the regulated entity or the OF and is acknowledged by an authorized FHFA official, reflecting specific written commitments to take corrective actions in response to problems or concerns identified by FHFA in its supervision of the regulated entity or the OF. The document may be drafted by either FHFA or by the regulated entity or the OF. A commitment letter is not a binding legal document. However, failure to honor the commitments provides strong evidence of the need for formal action. The substance of a commitment letter may be embodied in a board resolution.

Memorandum of Understanding

A memorandum of understanding (MOU) is also a bilateral document signed by the regulated entity's or the OF's board of directors on behalf of the regulated entity or the OF and an authorized FHFA representative. An MOU is drafted by FHFA and in form and content looks very much like a formal FHFA enforcement action. It legally has the same force and effect as a commitment letter.

FORMAL ACTIONS

Orders Under 12 USC 4631

a. Consent Orders

Consent order is the title given by FHFA to a cease-and-desist order that is entered into and becomes final through the board of directors' consent to it, normally by execution on behalf of the regulated entity or the OF of a stipulation and consent document. Consent orders are also signed by an authorized FHFA official. Like all cease-and-desist orders, the consent order is an order issued pursuant to 12 USC 4631. Its provisions are set out in article-by-article form and prescribe those restrictions, corrective and remedial measures necessary to correct deficiencies or

violations in the regulated entity or the OF and return it to a safe and sound condition. Violations of a consent order can provide the legal basis for assessing civil money penalties against directors, officers and other entity-affiliated parties. A consent order may also be enforced through application to a U.S. district court. Moreover, a willful violation of a final consent order is itself grounds for receivership under 12 USC 4617(a)(3)(D).

b. Cease-and-Desist Orders

A cease-and-desist order is identical in form and legal effect to a consent order; however, a cease-and-desist order is imposed on an involuntary basis after issuance of a notice of charges, hearing before an administrative law judge, and final decision and order issued by the Director. A final cease-and-desist order is reviewable by a U.S. court of appeals. Cease-and-desist orders can be used to order affirmative corrective action including the power to: (i) make restitution to, or provide reimbursement, indemnification or guarantee against loss; (ii) require the regulated entity or the OF to seek restitution, obtain reimbursement, indemnification or guarantee against loss; (iii) restrict the growth of the regulated entity or the OF; (iv) require the regulated entity or the OF to dispose of loans or assets; (v) to require the regulated entity or the OF to rescind contracts or agreements; and (vi) require the regulated entity or the OF to employ qualified officers or employees. Moreover, a willful violation of a final cease-and-desist order is itself grounds for conservatorship or receivership under 12 USC 4617(a)(3)(D).

c. Temporary Cease-and-Desist Orders

A temporary cease-and-desist order is an interim order issued by FHFA pursuant to its authority under 12 USC 4632 and is used to impose measures that are needed immediately pending resolution of a final cease-and-desist order. Such orders are typically used only when immediately necessary to protect the regulated entity or the OF against ongoing or expected harm. A temporary cease-and-desist order may be challenged in U.S. district court within 10 days of issuance, but is effective upon issuance and remains effective unless overturned by the court or until a final order is in place.

Written Agreements

A written agreement is a bilateral document signed by the board of directors on behalf of the regulated entity or the OF and an authorized FHFA official. Like a consent order, its provisions are set out in article-by-article form and prescribe those restrictions, corrective and remedial measures necessary to correct deficiencies or violations in the regulated entity or the OF. A violation of the terms of a written agreement can form the basis for a cease-and-desist proceeding under 12 USC 4631, as well as assessing civil money penalties against directors, officers and other entity-affiliated parties. Written agreements may be enforced thorough a cease-and-desist proceeding; however, unlike a consent order, written agreements are not enforceable through the federal court system. Another important difference between a written agreement and a consent order is that willful violation of a consent order may be used as grounds

for appointment of a conservator or receiver while a willful breach of a written agreement, by itself, may not.

Prudential Management and Operations Standards (PMOS) Notices and Orders

Under 12 USC 4513b, if FHFA determines that a regulated entity fails to meet any of the standards, FHFA may issue written notice of the agency's determination and require the regulated entity to submit a corrective plan. The corrective plan must describe the actions the regulated entity will take to correct the deficiency, and the time within which each action will be taken. If the regulated entity is undercapitalized, the corrective plan may be part of a capital restoration plan. If the regulated entity fails to submit an acceptable corrective plan, or fails in any material respect to implement or otherwise comply with an approved plan, FHFA will order the regulated entity to correct the deficiency. Prior to issuing the order, FHFA will provide written notice to the regulated entity of the agency's intent to issue an order, and provide the regulated entity with the opportunity to respond to the notice. FHFA may also prohibit the growth of the regulated entity's assets; prohibit payment of dividends or repurchase or redemption of capital stock; require the regulated entity to increase its capital; or take any other action the Director determines will better carry out the purposes of 12 USC 4513b(2)(B). FHFA must take certain additional action against a regulated entity that has not corrected a deficiency if the regulated entity experienced extraordinary growth (defined in the FHFA rule) over the prior 18 months. See FHFA final rule and guidelines at 12 CFR part 1236—Prudential Management and Operations Standards.

Orders Enforcing Housing Goals-Related Compliance

With respect to the Enterprise housing goals established under 12 USC 4562(a) and 4563(a)(1), if FHFA requires an Enterprise to submit a housing plan and the Enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, FHFA may issue a cease-and-desist order in accordance with 12 USC 4581, impose civil money penalties in accordance with 12 USC 4585, exercise other appropriate enforcement authority, or seek other appropriate actions. See 12 USC 4566(c)(1) and (c)(7). In addition, under 12 USC 4581 and 4585, FHFA may issue a cease-and-desist order or impose civil money penalties, respectively, if an Enterprise fails to submit a required report under the housing goals.

With respect to the Bank housing goals established under 12 USC 1430c, the monitoring and enforcement requirements of 12 USC 4566 apply to the Banks in the same manner and to the same extent as the requirements of that section apply to the Enterprises. See 12 USC 1430c(d).

APPENDIX B

MANDATORY AND DISCRETIONARY PROVISIONS UNDER PCA; PROMPT SUPERVISORY RESPONSE

PCA Directives

Under 12 USC chapter 46 Subchapter II and 12 CFR 1229 (Prompt Corrective Action or PCA), the Banks are subject to mandatory and discretionary restrictions and actions depending upon the Bank's PCA capital category. Mandatory restrictions and actions are effective upon the Bank receiving notice from FHFA that it is in a particular PCA capital category. Discretionary restrictions and actions are imposed on the Bank through the issuance of a PCA directive. If circumstances warrant, FHFA may issue a PCA directive that is immediately effective. Otherwise, the normal process for issuing such a PCA directive begins with the issuance of a notice of intent to issue a directive. The notice identifies the Bank's capital category and various capital measures, and describes the proposed actions that would be included in the directive. The Bank has an opportunity to respond to the notice of intent, explain why the proposed directive is not necessary or offer suggested modifications to the proposed directive. After considering the response, FHFA may issue a PCA directive, or determine that no action is necessary.

Prompt Supervisory Response

Under 12 CFR 1777, subpart A, FHFA may issue a prescribed set of letters and notices in response to adverse developments at an Enterprise, escalating in response to the severity of conditions at the Enterprise and culminating in notices to commence formal cease-and-desist proceedings or capital reclassification. Similar actions can be taken with respect to the Banks under FHFA's general supervisory authority, consistent with the formal and informal enforcement tools described above.