



FEDERAL HOUSING FINANCE AGENCY

ADVISORY BULLETIN

AB 2015-01

FHLBANK FRAUD REPORTING

Purpose

This advisory bulletin communicates the Federal Housing Finance Agency's (FHFA) guidance on fraud activity reporting for the Federal Home Loan Banks (FHLBanks).

This advisory bulletin rescinds and replaces FHFA's Regulatory Policy Guidance RPG-2011-001, *Reporting of Fraudulent Financial Instruments* (RPG-2011-001), as the RPG applies to the FHLBanks.

Background

The FHLBanks, Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the "Enterprises") (the FHLBanks and the Enterprises collectively, the "regulated entities") have certain reporting requirements under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. Section 4501 *et seq.*) (Safety and Soundness Act) as implemented by 12 CFR Part 1233 (FHFA Regulation). The Housing and Economic Recovery Act of 2008 (HERA) amended the Safety and Soundness Act and conferred upon FHFA supervisory and oversight responsibilities for the Enterprises and the FHLBanks. The Safety and Soundness Act subjects the regulated entities to fraud reporting (12 U.S.C. 4642) and requires each regulated entity to submit to FHFA a "timely" report upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or when it suspects a possible fraud related to the purchase or sale of any loan or financial instrument (12 U.S.C. 4642).

The FHFA Regulation implements the timely reporting requirement of the Safety and Soundness Act (12 U.S.C. 4642) and requires that a regulated entity provide immediate notification to the Director of FHFA either by telephone or electronic communication upon the discovery of any

situation that would have a significant impact on the regulated entity, determine the manner in which the regulated entities are to report a fraud or possible fraud to FHFA, as well as develop internal controls, policies, procedures and training as related to the reporting of fraud or possible fraud. (12 CFR Part 1233). The FHFA Regulation grants the Director authority to determine procedures by which the regulated entities will submit such reports (12 CFR 1233.3(b)).

On February 25, 2014, the Financial Crimes Enforcement Network (FinCEN) published the “Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Housing Government Sponsored Enterprises” (31 CFR Parts 1010 and 1030) (79 FR 10365) (FinCEN Regulation), which extends certain provisions of the Bank Secrecy Act to the regulated entities, and delegates examination responsibility to FHFA to determine compliance with the requirements of the FinCEN Regulation. Generally, the FinCEN Regulation requires that each regulated entity develop an anti-money laundering (AML) program and file suspicious activity reports (SARs), among other requirements. The FinCEN Regulation became effective on April 28, 2014. Starting August 25, 2014, the regulated entities were required to comply with the SAR filing requirements.

Guidance - Reporting

The FHLBanks should implement policies and procedures for complying with FinCEN reporting requirements as defined in the FinCEN Regulation. In addition, this advisory bulletin provides the FHLBanks guidelines for reporting fraud to FHFA in compliance with the FHFA Regulation and for supervisory oversight purposes. Previous guidance issued under RPG-2011-001 is no longer applicable, including guidance limiting fraud reporting to those instances involving a pattern of fraud of which the transaction is a part.

FHFA may request additional information related to fraud or potential fraud from the FHLBanks individually or collectively to accomplish the agency’s supervisory objectives.

1. Definitions

A number of definitions appear in 12 CFR Part 1233, and additional terms used in this advisory bulletin are defined below.

Discovery Date means the date at which an FHLBank becomes aware of a fraud or possible fraudulent activity, including employee misconduct.

Financial Instrument Fraud Officer (FIFO) means a designated management official with overall responsibility for overseeing the investigation, reporting and operational training in connection with fraud or possible fraud involving the purchase or sale of loans or other financial instruments. The FIFO’s operational training responsibilities include developing and maintaining a training program designed to ensure that employees and contractors who have fraud detection, investigation and reporting responsibilities conduct their duties efficiently and effectively. This position does not need to be a stand-alone job function, so long as other responsibilities do not conflict with the FIFO duties. The FIFO may be the same person as the compliance officer required by the FinCEN Regulation.

Insider Fraud, for purposes of this advisory bulletin, means a fraud or possible fraud involving a member of the board of directors, an officer, an employee, or a contractor temporarily engaged to fill a position at an FHLBank or other individual similarly engaged by an FHLBank. Insider fraud also includes misconduct by an employee that:

- 1) Intentionally falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- 2) Makes any materially false, fictitious, or fraudulent statement or representation; or
- 3) Makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry that results in a material personal benefit or causes material harm to the FHLBank.

The reporting of such employee misconduct is within FHFA's authority under 12 U.S.C. 4514, which provides the Director the authority to require reports by the regulated entities as the Director considers appropriate.

Significant, as used in the context of an immediate notification, means that which may affect the integrity of or public confidence in the FHLBank or the U.S. Government.

2. FHLBank Reporting

The FHLBanks should adhere to the following reporting requirements in order to fulfill their timely reporting responsibilities under 12 CFR 1233.3(a)(1).

Control Environment

Compliance with the FHFA Regulation and the FinCEN Regulation will be best enabled if each FHLBank maintains a FIFO (as defined above) and the FIFO oversees the following reporting requirements.

Immediate Notification

To comply with 12 CFR 1233.3(a)(2), an FHLBank should notify the Director's designee(s) within one calendar day of the Discovery Date by telephone and by electronic communication when a fraud or possible fraud may involve a significant fiscal, financial, or reputational impact on the FHLBank, when a significant fraud or possible fraud involves a vendor, or when a fraud or possible fraud involves insider fraud, including employee misconduct.

Suspicious Activity Report Filing Notification

FHLBanks should notify the Division of FHLBank Regulation (DBR) by electronic communication that it has filed a SAR with FinCEN on the same day as filing the SAR. This notification should include the Discovery Date, FinCEN filing date, SAR filing name, the estimated monetary value, a description of the activity reported in the filing, and any other information requested by FHFA. FHFA will provide a template that an FHLBank may use for such reporting and the name(s) of the Director's designee(s).

Cumulative Quarterly Status Report

The FHLBanks should submit a quarterly report to FHFA, referred to as the *Cumulative Quarterly Status Report*, which should include a summary of all SARs filed with FinCEN during the current year, all open (unresolved) SARs or previously filed Financial Instrument Fraud Reports (FIFRs), and any SARs/FIFRs closed or resolved during the past three years. FHFA will provide the FHLBanks with a template for the *Cumulative Quarterly Status Report*.

Each FHLBank should provide the Director's designee(s) with the *Cumulative Quarterly Status Report* within ten (10) calendar days after the end of each calendar quarter, regardless of whether the FHLBank had a reportable event during the period covered by the report. The FHLBank should send the report electronically through secure methods or such other process as established by FHFA.

Annual Conformance Review and Report

No less than annually, each FHLBank should review the requirements of the FHFA Regulation, the FHLBank's internal controls, and this advisory bulletin to determine whether its practices are aligned with FHFA's expectations.

Each FHLBank should submit an *Annual Conformance Report* to its board of directors describing the results of its annual review. At a minimum, the *Annual Conformance Report* should include a summary of the FHLBank's policies, procedures, internal controls, and training for financial instrument fraud and anti-money laundering risk that have been developed, modified, or enhanced; other actions taken by the FHLBank to conform with the provisions of this advisory bulletin; and the status of the FHLBank's efforts to remediate "matters requiring attention" related to the discovery and reporting of fraud or possible fraud identified as part of FHFA examinations.

FHLBank Reporting

Upon its approval and as documented in meeting minutes, the FHLBank's board of directors should submit the *Annual Conformance Report* to the Director's designee(s) three months after the close of the reporting cycle. For the initial reporting cycles under this advisory bulletin, the *Annual Conformance Report* should cover calendar year 2014, then the time period of January 1, 2015 through June 30, 2015. Thereafter, the *Annual Conformance Report* should cover the time period of July 1 through June 30 of the following year, with the *Annual Conformance Report* submitted on or before September 30.

Advisory bulletins communicate guidance to FHFA supervision staff and the regulated entities on specific supervisory matters pertaining to the FHLBanks, Fannie Mae, and Freddie Mac. For the FHLBanks, contact Amy Bogdon, Associate Director for Regulatory Policy and Programs, Division of FHLBank Regulation at Amy.Bogdon@fhfa.gov.