

(c) *Access to and retrieval of records during a record hold.* The record retention program of each regulated entity or the Office of Finance shall ensure access to and retrieval of records by the regulated entity or the Office of Finance and access, upon request, by FHFA, during a record hold. Such access shall be by reasonable means, consistent with the nature and availability of the records and existing information technology.

#### § 1235.6 Access to records.

(a) *Access to records.* Each regulated entity or the Office of Finance shall make its records readily available for inspection and other supervisory purposes within a reasonable period upon request by FHFA, at a location acceptable to FHFA and by reasonable means, consistent with the nature and availability of the records and existing information technology.

(b) *Reasonable period.* For requests for documents made during the course of an on-site examination and pursuant to the examination's scope, a reasonable period is presumed to be no longer than one business day. For requests for documents made outside of an on-site examination, a reasonable period is presumed to be three business days.

#### § 1235.7 Supervisory action.

(a) *Supervisory action.* Failure by a regulated entity or the Office of Finance to comply with this part may subject the regulated entity or the Office of Finance or the board members, officers, or employees thereof to supervisory action by FHFA under the Safety and Soundness Act, including but not limited to cease-and-desist proceedings, temporary cease-and-desist proceedings, and civil money penalties.

(b) *No limitation of authority.* This part does not limit or restrict the authority of FHFA to act under its safety and soundness mandate, in accordance with the Safety and Soundness Act. Such authority includes, but is not limited to, conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules, and regulations.

### CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### PART 1732—[REMOVED]

4. Remove part 1732.

Dated: July 28, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9-18489 Filed 8-3-09; 8:45 am]

BILLING CODE P

### FEDERAL HOUSING FINANCE BOARD

#### 12 CFR Parts 985, 989

### FEDERAL HOUSING FINANCE AGENCY

#### 12 CFR Parts 1273, 1274

RIN 2590-AA30

### Board of Directors of Federal Home Loan Bank System Office of Finance

**AGENCY:** Federal Housing Finance Agency; Federal Housing Finance Board.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** Governed by the Federal Housing Finance Agency's (FHFA) regulations, the Federal Home Loan Bank System's (System) Office of Finance, issues debt ("consolidated obligations") on which the Federal Home Loan Banks (Banks) are jointly and severally liable and publishes combined financial reports on the Banks so that investors in the consolidated obligations can assess the strength of the System that stands behind them. The Office of Finance (OF) is governed by a board of directors, the composition and functions of which are determined by FHFA's regulations. The FHFA's experience with the System and with the OF's combined financial reports during the recent period of market stress suggests that the OF and the System could benefit from a reconstituted and strengthened board. This proposed regulation is intended to achieve that.

**DATES:** Comments on the proposed regulation must be received on or before October 5, 2009. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit your comments on the proposed regulation, identified by regulatory information number (RIN) 2590-AA30 by any of the following methods:

- *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-AA30, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA30, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

• *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail at [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov). Please include "RIN 2590-AA30" in the subject line of the message.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Joseph A. McKenzie, 202-408-2845, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Neil Crowley, Deputy General Counsel, 202-343-1316, or Thomas E. Joseph, Senior Attorney-Advisor, 202-414-3095, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Comments

The FHFA invites comments on all aspects of the proposed regulation, and will adopt a final regulation with appropriate changes after taking all comments into consideration. Copies of all comments will be posted on the Internet Web site at <https://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 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

##### II. Background

#### A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), the oversight responsibilities of the Federal Housing Finance Board (FHFB or Finance Board) over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development to a new independent executive branch agency, the FHFA. See *id.* at § 1101, 122 Stat. 2661-62 (*amending* 12 U.S.C. 4511). The FHFA

is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at § 1102, 122 Stat. 2663–64. The Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the FHFB until the FHFA issues its own regulations. *See id.* at §§ 1302, 1313, 122 Stat. 2795, 2798.

#### B. The Bank System Generally

The twelve Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act).<sup>1</sup> *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as State housing finance agencies) may obtain access to secured loans, known as advances or other products provided by a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions. *See* 12 U.S.C. 1427. Any eligible institution (generally a Federally insured depository institution or State-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424; 12 CFR part 925.

As government-sponsored enterprises (GSEs), the Banks are granted certain privileges under Federal law. In light of those privileges and their status as GSEs, the Banks typically can borrow funds at spreads over the rates on U.S. Treasury securities of comparable maturity lower than most other entities. The Banks pass along a portion of their GSE funding advantage to their members—and ultimately to consumers—by providing advances and other financial services at rates that would not otherwise be available to their members. Consolidated obligations (COs), consisting of bonds and discount notes, are the principal funding source for the Banks. The OF issues all COs on behalf of the twelve Banks. Although

each Bank is primarily liable for the portion of consolidated obligations corresponding to the proceeds received by that Bank, each Bank is also jointly and severally liable with the other eleven Banks for the payment of principal and interest on all COs. *See* 12 CFR 966.9.

#### C. The OF

The OF was one of a number of joint Bank offices established by regulation by the former Federal Home Loan Bank Board (FHLBB), a predecessor agency to the FHFA. *See* 65 FR 324, 326 (Jan. 4, 2000). The OF was originally formed from two other joint Bank Offices, the Office of System Finance and the Office of Fiscal Agent. Among other things, OF was assigned the duties previously vested in the Fiscal Agent which included facilitating the issuance of COs. *Id.*

In 1989, as part of the amendments made to the Bank Act by the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA),<sup>2</sup> all joint offices of the Bank System other than the OF were abolished. The FHLBB was also abolished and its regulatory authority over the Bank System, including OF, was transferred to the Finance Board. The FHLBB's regulations were also transferred to the Finance Board. *Id.* In 1992, the Finance Board reorganized the OF as fiscal agent of the Finance Board for issuing COs under section 11(c) of the Bank Act, and set forth other duties for OF.<sup>3</sup> *See* 57 FR 11429 (Apr. 3, 1992) (*adopting* 12 CFR part 941). The regulation also instituted a three-member board of directors for the oversight and management of the OF, made up of two Bank presidents and a private United States citizen with demonstrated expertise in financial markets. *Id.*

In January 2000, the Finance Board proposed changes to its regulations to alter how COs were issued under section 11 of the Bank Act, reorganize the OF and its board of directors, and expand the duties of the OF, including assigning OF the duty to prepare the Bank System combined annual and quarterly financial reports. *See* 65 FR 324. As proposed, the January 2000 regulation transferred authority for issuance of the Bank COs from the Finance Board, which had been issuing

debt pursuant to then-existing authority under section 11(c) of the Bank Act, to the Banks themselves pursuant to authority under section 11(a) of the Bank Act and subject to the requirement, among other things, that all such debt issued by the Banks be the joint and several obligations of all twelve Banks and be issued through OF as their agent. *Id.* Under the proposed regulation, the Finance Board retained the option to issue COs itself under section 11(c) of the Bank Act at any point in the future.

The Finance Board also believed that “[a]s a natural and necessary adjunct to the issuance of COs, the Banks also should be responsible for the preparation of the disclosure documents that facilitate CO issuance and for the periodic combined financial statements for the Bank System.” *Id.* at 325. The Finance Board therefore proposed that OF, as the only joint Bank System office and existing agent for CO issuance, be assigned the duty of preparing the Bank System's combined financial reports. *Id.* The Finance Board also proposed to codify disclosure standards in the regulation, many of which had been set forth in a Finance Board policy statement. Other duties related to debt issuance and management were also proposed to be assigned to OF.

In light of the expanded duties assigned to OF as well as amendments to the Bank Act that had recently been made by the Gramm-Leach-Bliley Act (GLB Act),<sup>4</sup> the Finance Board also thought it was appropriate to alter both the size and composition of the OF board. *Id.* at 326. The Finance Board had two main goals in proposing its changes. First, it wanted to build on the governance structure in the Bank Act by which the Banks should be provided greater autonomy to manage their affairs. Second, it wanted to assure each Bank had representation on the OF board to help achieve operational goals and wanted to assure that the OF board itself had directors with experience and qualification to help OF meet the evolving needs of the Bank System.

Under the 2000 proposal, the OF board of directors would have been expanded to 24 members, 12 of whom would have been appointed by the Banks, 6 of whom would have been elected by Bank members and 6 of whom would have been appointed by the Finance Board. The Finance Board also proposed that the chair and vice chair of the board be appointed by the Finance Board. The proposal would have required the OF board of directors

<sup>2</sup> Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989).

<sup>3</sup> As it existed in 1992, section 11(c) of the Bank Act provided the Finance Board authority to issue the debt on which the Banks were jointly and severally liable. 12 U.S.C. 1431(c)(1992). HERA recently amended this provision and removed authority from the regulator to issue such debt on behalf of the Banks and provided the OF as agent for the Banks with authority to issue the COs. *See* § 1204(3)(B), Public Law 110–289, 122 Stat. 2786.

<sup>1</sup> Each Bank is generally referred to by the name of the city in which it is located. The twelve Banks are located in: Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle.

<sup>4</sup> Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999).

to establish an audit committee with duties similar to those established under the regulations for the Banks' audit committees, an executive committee, and a committee to coordinate the issuance and servicing of COs.

After consideration of the comments on the proposed regulation, the Finance Board adopted many of the changes including those authorizing the Banks to issue COs under section 11(a) of the Bank Act and assigning to OF the function of preparing the Bank System's combined financial reports, along with additional duties. *See* 65 FR 36290 (June 7, 2000) (*adopting* among other parts 12 CFR parts 966 and 985). The Finance Board did not, however, adopt the proposed changes to the OF board structure or composition. Instead, the new regulation incorporated the prior three-person board structure. The Finance Board also specified some additional duties for the OF board consistent with the additional functions that had been assigned to OF over the years. Since the 2000 rulemaking, no significant changes to the regulations governing the OF have been proposed.

#### *D. Considerations of Differences Between the Banks and the Enterprises*

Section 1201 of HERA requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: Cooperative ownership structure; Mission of providing liquidity to members; Affordable housing and community development mission; capital structure; and Joint and several liability. *See* § 1201 Public Law 110-289, 122 Stat. 2782-83 (*amending* 12 U.S.C. 4513). The Director also may consider any other differences that are deemed appropriate. In preparing this proposed regulation, the FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors. The FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal.

### **III. The Proposed Regulation**

#### *A. Reasons for the Proposed Regulation Changes*

As discussed in detail below, the FHFA is proposing a number of changes to the size and structure of the OF board of directors and how the OF board exercises oversight over the process for preparing the Bank System's combined financial reports. The FHFA believes that these changes will assist the Banks in coordinating among themselves the

process of providing OF the necessary information to prepare the System combined financial reports, and that these changes will facilitate accurate and meaningful disclosure in the combined reports and, thereby, garner market confidence.

Because the Bank System's main source of funding is COs on which the Banks are jointly and severally liable, the combined financial reports prepared by OF remain an important source of information about the financial state of the Bank System as a whole and are an important tool in marketing System debt and in assuring the Banks' access to domestic and international financial markets. For these purposes, the combined financial reports provide a single source of information about the Bank System. Assuring that this information is consistent and can readily be compared across all Banks is important to market acceptance of Bank debt and hence to the continued financial health of the Banks.

The proposed regulation would achieve these purposes with two principal elements: first, by expanding the OF's board to include all of the Federal Home Loan Bank presidents plus an audit committee comprising three to five independent directors; and second, by empowering the audit committee to ensure that the combined financial reports are compiled using common accounting policies and procedures across the twelve Banks. The FHFA's authority to adopt this regulation is grounded in its general supervisory authority over the OF and the Banks, 12 U.S.C. 1311(b)(2), 1313(a)(1), 1319G, 1431.

#### *B. Overview of the Proposed Regulation*

The proposed regulation would re-adopt many of the provisions in current 12 CFR part 985, which established the OF and governs the duties and function of OF and its board of directors, and in 12 CFR part 989, which address audit requirements and financial statements for the Banks. It would, however, make a number of amendments to the current regulations, most significantly with regard to the structure and duties of both the OF board of directors and its audit committee. The proposed regulation also would make some changes with regard to the standards governing the Bank System's combined financial reports and would amend some of the current part 985 provisions to conform the regulatory language to statutory changes made by HERA. Under the proposed regulation, the regulations that had been set forth in the parts 985 and 989 of the former Finance Board regulations, would be removed

and adopted by the FHFA, respectively, as 12 CFR parts 1273 and 1274.

Proposed part 1273 would provide regulations which re-establish the OF and set forth its duties, and functions. Under part 1273 as proposed, the specification of the OF's authority and functions would remain substantially unchanged, although the language in the regulations would be altered to reflect the fact that the FHFA is no longer authorized to issue debt on behalf of the Banks and the OF would thus be acting only as an agent for the Banks with respect to its debt issuance duties. *See* n.3 *supra*. The Banks would also remain responsible for jointly funding the OF, and the process and requirements for providing such funding would not change to any great degree. Under proposed § 1273.5, however, the formula for calculating each Bank's *pro rata* share of the reimbursement owed the OF would no longer be based on a formula set forth in the regulation. Instead, the OF board of directors would be allowed to establish any reasonable formula, subject to the right of the FHFA to review such formula and require changes to it.

The debt management functions and duties assigned to OF also would also remain much the same under the proposed regulation as currently, although, as discussed more fully below, the FHFA is proposing some changes to the standards governing the preparation of the combined financial reports. Under the proposed regulation, the OF would also still be required to monitor the unsecured credit exposure of the Banks and would be required to compile relevant data on such exposures.

As proposed, the specific requirements now set forth in 12 CFR part 989 would be readopted in part 12 CFR part 1274 almost in their entirety. The proposed regulation would make some conforming changes in § 1274.2 to reflect the fact that the FHFA is proposing an audit committee to be established for OF which would have a composition that is different from that of the OF board of directors as a whole. In addition, current section 989.4 of this title, which relates to voluntary Bank disclosure of financials, would not be re-adopted as part of the proposed part 1274 regulations. This particular provision pre-dated the Banks' registration of their stock with the Securities and Exchange Commission (SEC). Given that an individual Bank's disclosure of financial information is now subject to the SEC's regulations and oversight, the FHFA does not see a need to maintain this provision going forward.

### *C. Proposed Changes in OF Board Structure and Process for Selecting Directors*

The new structure being proposed for the OF board of directors is set forth in proposed § 1273.7. Under this provision, the OF board of directors would be composed of 15 to 17 part-time members—the twelve Bank presidents and three to five independent directors. The independent directors would be required to be citizens of the United States and none could be an officer, employee, or director of any Bank or Bank System member, nor could the independent director have any substantial financial interest in a Bank System member. Persons affiliated with or having substantial financial interests in any CO seller or dealer group member under contract with OF would not qualify to be an independent director. The proposed regulation would also require the independent directors, as a group, to have substantial experience in financial and accounting matters.

Under the proposed regulation, the FHFA would appoint the first independent directors that serve on the board after the effective date of the regulation from candidates nominated by the Banks. Thereafter, the independent directors would be elected by majority vote of the OF board of directors. If the FHFA objected to the election of any individual independent director, the FHFA would retain the ability to appoint a more qualified director. As a practical matter, the FHFA would expect the OF board of directors to provide the names of, and background information on, nominees for board positions in sufficient time for the FHFA to raise any concerns prior to the actual election.

Terms for independent directors would be set at five years, although the proposal would require staggering of the seats to assure that no more than one seat would be scheduled to become vacant in any one year, so the initial terms could range from one to five years. If an independent director's seat became vacant for any reason before the end of a scheduled term, the proposed regulation would allow that seat to be filled by majority vote of the OF board, but only for the remainder of the original term.

The proposed regulation would also allow the FHFA to appoint the initial chair and vice chair of the OF board. The chair would be one of the independent directors while the vice chair could be appointed from among any of the directors. After the term of the initial chair or vice chair expired or became vacant for any other reason, the

proposal would allow subsequent chairs and vice chairs to be elected by majority vote of the OF board. The chair would be elected from among the independent directors while the vice chair could be elected from among any of the directors. Under the proposal, the FHFA would retain the authority to object to the election of any chair or vice chair by providing the OF board of directors written notice within 20 calendar-days, upon FHFA receipt of notification of the election, and the board of OF would then be required to promptly elect a new chair or vice chair as appropriate.

The OF board of directors would be authorized to create committees, such as an executive committee, and to delegate authority to such committees, although the regulation would specifically require that an audit committee be established and would specify the duties of that committee. The functions and duties of any committee (including the scope of any delegation) would be specified in the board's bylaws or in specific committee charters. The bylaws and charters would be subject to review and approval by the FHFA. The OF board, or any committee thereof including the audit committee, would be authorized to hire outside counsel, independent accountants, or other outside experts at the expense of the OF to help it carry out its duties.

As under the current regulations, the proposed regulation would specify that Bank presidents would serve without additional compensation. The compensation for the independent directors would be set in accordance with 12 CFR part 918, which currently governs compensation for directors and chairs of the Banks' boards of directors. The current indemnification provision would also be carried over to the new regulation as now proposed.

The proposed duties of the OF board of directors are set forth in proposed § 1273.8. These duties closely correspond to those in the current regulations. Duties and functions related to the preparation of the combined financial reports and oversight of the internal and external audit function for OF and the combined reports, which are currently among the duties of the OF board of directors, would be specifically transferred to the audit committee, as is discussed in the next section.

### *D. Proposed Changes for Audit Committee*

Under the proposed regulation, the audit committee, constituted as described above, would assume the board's responsibilities for overseeing the audit function of the OF and the OF's preparation of accurate combined

financial reports, including selection and appointment of the OF's internal and external auditors. As part of its responsibilities, the audit committee would be specifically authorized to ensure that the Banks adopt consistent accounting policies and procedures so that the combined financial reports will continue to be accurate and meaningful. If the Banks are not able to agree on such consistent accounting policies and procedures, the audit committee, in consultation with the FHFA, may prescribe them.

### *E. Proposed Changes in Disclosure Standards*

Consistent with the responsibility of the audit committee to ensure consistency of accounting policies and procedures across the Bank System, the regulations governing the content of the combined financial reports would be amended to include a requirement that information about the Banks be presented using consistent accounting policies and procedures (proposed § 1273.6(b)(2)). In addition, in acknowledgement of the increasingly national business models of major holding companies who can access multiple Banks through subsidiaries in different Bank districts, the regulations would be amended to include requirements that the combined financial reports include lists of the top ten holders of advances and of stock in the Bank System by holding company (proposed Part 1273 Appendix A, paragraphs A and G).

## **IV. Paperwork Reduction Act**

The proposed regulation does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, the FHFA has not submitted any information to the Office of Management and Budget for review.

## **V. Regulatory Flexibility Act**

The proposed regulation applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore in accordance with section 605(b) of the RFA, the FHFA certifies that this proposed regulation, if promulgated as a final regulation, will not have significant economic impact on a substantial number of small entities.

### **List of Subjects**

12 CFR Part 985

Federal home loan bank, Securities.

**12 CFR Part 989**

Accounting, Federal home loan banks, financial disclosure.

**12 CFR Part 1273**

Federal home loan banks, securities.

**12 CFR Part 1274**

Accounting, Federal home loan banks, financial disclosure.

Accordingly, for reasons stated in the preamble, under the authority of 12 U.S.C. 1311(b)(2), 1313(a)(1), 1319G and 1431, the FHFA proposes to amend chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

**CHAPTER IX—FEDERAL HOUSING  
FINANCE BOARD**

**Subchapter K—Office of Finance**

**PART 985—THE OFFICE OF FINANCE**

1. Remove 12 CFR part 985.

**PART 989—FINANCIAL STATEMENT  
OF THE BANKS**

2. Remove 12 CFR part 989.

**CHAPTER XII—FEDERAL HOUSING  
FINANCE AGENCY**

**Subchapter D—Federal Home Loan Banks**

3. Add part 1273 to subchapter D to read as follows:

**PART 1273—OFFICE OF FINANCE**

Sec.

- 1273.1 Definitions.
  - 1273.2 Authority of the OF.
  - 1273.3 Functions of the OF.
  - 1273.4 FHFA oversight.
  - 1273.5 Funding of the OF.
  - 1273.6 Debt management duties of the OF.
  - 1273.7 Structure of the OF board of directors.
  - 1273.8 General duties of the OF board of directors.
  - 1273.9 Audit committee.
- Appendix A to Part 1273—Exceptions to the General Disclosure Standards

**Authority:** 12 U.S.C. 1431(a) and (c), 1440, 4511(b), 4513, 4514(a), 4526(a).

**§ 1273.1 Definitions.**

For purposes of this part:

*Audit Committee* means the OF Independent Directors acting as the committee established in accordance with § 1273.9 of this part.

*Bank* written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

*Bank System* means the Federal Home Loan Bank System, consisting of the twelve Banks and the Office of Finance.

*Chair* means the chairperson of the board of directors of the Office of Finance.

*Chief Executive Officer* or *CEO* means the chief executive officer of the Office of Finance.

*Consolidated obligations* means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

*FHFA* means the Federal Housing Finance Agency.

*Financing Corporation* or *FICO* means the Financing Corporation established and supervised by the FHFA under section 21 of the Bank Act (12 U.S.C. 1441).

*Generally accepted accounting principles* or *GAAP* means accounting principles generally accepted in the United States.

*Independent Director* means a member of the OF board of directors who meets the qualifications set forth in § 1273.7(a)(2) of this part.

*NRSRO* means a credit rating organization registered as a Nationally Recognized Statistical Rating Organization with the Securities and Exchange Commission.

*Office of Finance* or *OF* means the Office of Finance, a joint office of the Banks established under this part 1273 and referenced in the Bank Act and the Safety and Soundness Act.

*Resolution Funding Corporation* or *REFCORP* means the Resolution Funding Corporation established by section 21B of the Bank Act (12 U.S.C. 1441b).

*Safety and Soundness Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended.

**§ 1273.2 Authority of the OF.**

(a) *General.* The OF shall enjoy such incidental powers under section 12(a) of the Bank Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient execution of its duties and functions pursuant to this part, including the authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties.

(b) *Agent.* The OF, in the performance of its duties, shall have the power to act on behalf of the Banks in issuing consolidated obligations and in paying principal and interest due on the consolidated obligations, or other obligations of the Banks.

(c) *Assessments.* The OF shall have authority to assess the Banks for the funding of its operations in accordance with § 1273.5 of this part.

**§ 1273.3 Functions of the OF.**

(a) *Joint debt issuance.* Subject to parts 965 and 966 of this title, and this part, the OF as agent shall offer, issue and service (including making timely payments on principal and interest due) consolidated obligations.

(b) *Preparation of combined financial reports.* The OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System in accordance with the requirements of § 1273.6(b) and Appendix A of this part, using consistent accounting policies and procedures as established under § 1273.9 of this part.

(c) *Fiscal agent.* The OF shall function as the fiscal agent of the Banks.

(d) *Financing Corporation and Resolution Funding Corporation.* The OF shall perform such duties and responsibilities for FICO as may be required under part 995 of this title, or for REFCORP as may be required under part 996 of this title or authorized by the FHFA pursuant to section 21B(c)(6)(B) of the Bank Act (12 U.S.C. 1441b(c)(6)(B)).

**§ 1273.4 FHFA oversight.**

(a) *Oversight and enforcement actions.* The FHFA shall have the same regulatory oversight authority over the OF, the OF board of directors, the officers, employees, agents, attorneys, accountants, or other OF staff, as it has over a Bank and its respective directors, officers, employees, agents, attorneys, accountants, or other staff.

(b) *Examinations.* Pursuant to section 20 of the Bank Act (12 U.S.C. 1440), the FHFA shall examine the OF, all funds and accounts that may be established pursuant to this part 1273, and the operations and activities of the OF, as provided for in the Bank Act, the Safety and Soundness Act, or any regulations promulgated pursuant thereto.

(c) *Combined financial reports.* The FHFA shall determine whether a combined Bank System annual or quarterly financial report complies with the standards of this part.

**§ 1273.5 Funding of the OF.**

(a) *Generally.* The Banks are responsible for jointly funding all the expenses of the Office of Finance, including the costs of indemnifying the members of the OF board of directors, the Chief Executive Officer, and other officers and employees of the OF, as provided for in this part.

(b) *Funding policies.* (1) At the direction of and pursuant to policies

and procedures adopted by the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the OF and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, wire transfer or draft signed by the Chief Executive Officer or other persons designated by the OF board of directors.

(2) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (b)(1) of this section shall be based on a reasonable formula approved by the OF board of directors. Such formula shall be subject to the review of the FHFA, and the OF board of directors shall make any changes to the formula as may be ordered by the FHFA from time to time.

(c) *Alternative funding method.* With the prior approval of the FHFA, the OF board of directors may, by contract with a Bank or Banks, choose to be reimbursed through a fee structure, in lieu of or in addition to assessment, for services provided to the Bank or Banks.

(d) *Prompt reimbursement.* Each Bank from time to time shall promptly forward funds to the OF in an amount representing its share of the reimbursement described in paragraph (b) of this section when directed to do so by the Chief Executive Officer pursuant to the procedures of the OF board of directors.

(e) *Indemnification expenses.* All expenses incident to indemnification of the members of the OF board of directors, the Chief Executive Officer, and other officers and employees of the OF shall be treated as an expense of the OF to be reimbursed by the Banks under the provisions of this part.

(f) *Operating funds segregated.* Any funds received by the OF from the Banks pursuant to this section for OF operating expenses promptly shall be deposited into one or more accounts and shall not be commingled with any proceeds from the sale of consolidated obligations in any manner.

#### **§ 1273.6 Debt management duties of the OF.**

(a) *Issuing and servicing of consolidated obligations.* The OF shall issue and service (including making timely payments on principal and interest due, subject to §§ 966.8 and 966.9 of this title) consolidated obligations pursuant to and in accordance with the policies and procedures established by the OF board of directors under this part.

(b) *Combined financial reports requirements.* The OF, under the oversight of the Audit Committee, shall prepare and distribute the combined annual and quarterly financial reports for the Bank System in accordance with the following requirements:

(1) The scope, form and content of the disclosure generally shall be consistent with the requirements of the Securities and Exchange Commission Regulations S-K and S-X (17 CFR parts 229 and 210).

(2) Information about each Bank shall be presented as a segment of the Bank System as if generally accepted accounting principles regarding business segment disclosure applied to the combined annual and quarterly financial reports of the Bank System, and shall be presented using consistent accounting policies and procedures.

(3) The standards set forth in paragraphs (b)(1) and (b)(2) of this section are subject to the exceptions set forth in Appendix A to this part.

(4) The combined Bank System annual financial reports shall be filed with the FHFA and distributed to each Bank and Bank member within 90 days after the end of the fiscal year. The combined Bank System quarterly financial reports shall be filed with the FHFA and distributed to each Bank and Bank member within 45 days after the end of the of the first three fiscal quarters of each year.

(5) The Audit Committee shall ensure that the combined Bank System annual or quarterly financial reports comply with the standards of this part.

(6) The OF and the OF board of directors, including the Audit Committee, shall comply promptly with any directive of the FHFA regarding the preparation, filing, amendment, or distribution of the combined Bank System annual or quarterly financial reports.

(7) Nothing in this section shall create or be deemed to create any rights in any third party.

(c) *Capital markets data.* The OF shall provide capital markets information concerning debt to the Banks.

(d) *NRSROs.* The OF shall manage the relationships with NRSROs in connection with their rating of consolidated obligations.

(e) *Research.* The OF shall conduct research reasonably related to the issuance or servicing of consolidated obligations.

(f) *Monitor Banks' credit exposure.* The OF shall timely monitor, and compile relevant data on, each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

#### **§ 1273.7 Structure of the OF board of directors.**

(a) *Membership.* The OF board of directors shall consist of fifteen to seventeen part-time members as follows:

(1) The twelve Bank presidents, *ex officio*, provided that if the presidency of any Bank becomes vacant, the person temporarily fulfilling the duties of president of that Bank may sit on the OF board of directors until the presidency is filled permanently; and

(2)(i) Three to five Independent Directors who each shall be a citizen of the United States and who, as a group, shall have substantial experience in financial and accounting matters. Such Independent Directors may not be officers, directors, or employees of any Bank or Bank System member, be affiliated with any consolidated-obligations selling or dealer group member under contract with OF, or hold shares or any other financial interest in any member of a Bank or in any such dealer group member in an amount greater than the lesser of—

(A) \$250,000 or

(B) 0.01% of the market capitalization of the member or dealer.

(ii) For purposes of this paragraph (a)(2), a holding company of a member of a Bank or a dealer group member shall be deemed to be a member if the assets of the holding company's member subsidiaries constitute 35% or more of the consolidated assets of the holding company.

(b) *Terms.* (1) Except as provided in paragraphs (b)(2) and (c)(1) of this section, each Independent Director shall serve for five-year terms (which shall be staggered so that no more than one Independent Director seat would be scheduled to become vacant in any one year), and shall be subject to removal or suspension or other enforcement action in accordance with § 1273.4(a) of this section. An Independent Director may not serve more than two full, consecutive terms. Time served by a private citizen member of the OF Board pursuant to an appointment made prior to the effective date of this part shall not count as a term for purposes of this restriction.

(2) The OF board of directors shall fill any vacancy among the Independent Directors occurring prior to the scheduled end of a term by majority vote, subject to the FHFA's review of, and non-objection to, the new Independent Director. The OF board of directors shall provide the FHFA with relevant biographic and background information, including information demonstrating that the new Independent Director meets the requirements of paragraph (a)(2) of this

section, at least 20 business days before the person assumes any duties as a member of the OF board of directors. A person elected under this paragraph to fill a vacancy on the OF board of directors shall serve only for the remainder of the term associated with the vacant directorship.

(c) *Initial selection of Independent Directors.* (1) As soon as practicable after the effective date of this regulation, the FHFA shall fill the initial Independent Director positions by appointment. The Independent Directors shall be appointed for such periods of time, not to exceed five years, to assure the terms are staggered in accordance with paragraph (b)(1) of this section.

(2) Each Bank shall have the right to nominate one person for consideration for appointment as an Independent Director by the FHFA under this paragraph (c). The nominations will be made according to any procedures established by the FHFA. The FHFA may appoint persons nominated by the Banks, or other persons meeting the requirements of paragraph (a)(2) of this section, or some combination.

(d) *Election of Independent Directors after the initial terms.* Once the terms of the Independent Directors initially appointed by the FHFA expire or the positions otherwise become vacant, the Independent Directors subsequently shall be elected by majority vote of the OF board of directors, subject to FHFA's review of, and non-objection to, each new Independent Director. The OF board of directors shall provide the FHFA with relevant biographic and background information, including information demonstrating that the new Independent Director meets the requirements of paragraph (a)(2) of this section, at least 20 business days before the person assumes any duties as a member of the OF board of directors. If the OF board of directors, in the FHFA's judgment, fails to elect a suitably qualified person, the FHFA may appoint some other person who meets the requirements of paragraph (a)(2) of this section.

(e) *Initial Selection of Chair and Vice Chair.* The first Chair and Vice Chair of the OF board of directors after the effective date of this regulation shall be appointed by the FHFA. The Chair shall be selected from among the Independent Directors appointed under paragraph (c)(1) of this section. The Vice-chair shall be selected from among all OF board directors.

(f) *Subsequent Election of Chair and Vice-Chair.* After the terms of the persons selected under paragraph (e) of

this section expire or the positions otherwise become vacant:

(1) Subsequent Chairs shall be elected by majority vote of the OF board of directors from among the Independent Directors then serving on the OF board of directors; and

(2) Subsequent Vice Chairs shall be elected by majority vote of the OF board of directors from among all directors.

(3) The OF board of directors shall promptly inform the FHFA of the election of a Chair or Vice Chair. If the FHFA objects to any Chair or Vice Chair elected by the OF board of directors, the FHFA shall provide written notice of its objection within 20 business days of the date that the FHFA first receives the notice of the election of the Chair and or Vice Chair, and the OF board of directors must then promptly elect a new Chair or Vice Chair, as appropriate.

(g) *Committees.* In addition to the Audit Committee required under § 1273.9 of this part, the OF board of directors may establish other committees, including an Executive Committee. The duties and powers of such committee, including any powers delegated by the OF board of directors, shall be specified in the by-laws of the board of directors or the charter of the committee, which shall be subject to review and approval by the FHFA.

(h) *Compensation.* (1) The Bank presidents shall not receive any additional compensation or reimbursement as a result of their service as a director of the OF board.

(2) The OF shall pay compensation and expenses to the Independent Directors in accordance with the requirements for payment of compensation and expenses to Bank chairs and directors as set forth in part 918 of this title.

(i) *Indemnification.* The OF shall indemnify its directors, the CEO, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors, *provided that* such terms and conditions are consistent with the terms and conditions of indemnification of directors, officers, and employees of the Bank System generally.

(j) *Delegation.* In addition to any delegation to a committee allowed under paragraph (g) of this section, the OF board of directors may delegate any of its authority or duties to any employee of the OF in order to enable OF to carry out its functions, provided that such delegation remains subject to the review of the FHFA, and the FHFA reserves the right in its sole discretion to require the OF board of directors to withdraw or change the scope of the delegation.

(k) *Outside staff and consultants.* In carrying out its duties and responsibilities, the OF board of directors, or any committee thereof, shall have authority to retain staff and outside counsel, independent accountants, or other outside consultants at the expense of the OF.

#### **§ 1273.8 General duties of the OF board of directors.**

(a) *General.* (1) *Conduct of business.* Each director shall have the duties described in § 917.2(b) of this title, as appropriate.

(2) *Bylaws.* The OF board of directors shall adopt bylaws in accordance with the provisions of § 917.10 of this title.

(b) *Meetings and quorum.* The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its bylaws, and shall hold no fewer than six in-person meetings annually. Due notice shall be given to the FHFA by the Chair prior to each meeting. A quorum, for purposes of meetings of the OF board of directors, shall not be less than ten members.

(c) *Duties regarding COs.* The OF board of directors shall oversee the establishment of policies regarding COs that shall:

(1) Govern the frequency and timing of issuance, issue size, minimum denomination, CO concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, selection of clearing organizations, and the selection and compensation of underwriters for consolidated obligations, which shall be in accordance with the requirements and limitations set forth in paragraph (c)(4) of this section;

(2) Prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each Bank describing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and considering the comments received before adopting a policy permitting such issuance activities;

(3) Require all broker-dealers or underwriters under contract to the OF to have and maintain adequate suitability sales practices and policies, which shall be acceptable to, and subject to review by, the OF;



(4) Require that COs shall be issued efficiently and at the lowest all-in funding costs over time, consistent with—

(i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as GSEs;

(ii) Maintaining reliable access to the short-term and long-term capital markets; and

(iii) Positioning the issuance of debt to take advantage of current and future capital market opportunities.

(d) *Other duties.* The OF board of directors shall:

(1) Set policies for management and operation of the OF;

(2) Approve a strategic business plan for the OF in accordance with the provisions of § 917.5 of this title, as appropriate;

(3) Review, adopt and monitor annual operating and capital budgets of the OF in accordance with the provisions of § 917.8 of this title, as appropriate;

(4) Select, employ, determine the compensation for, and assign the duties and functions of a Chief Executive Officer of the OF who shall—

(i) Be head of the OF and direct the implementation of the OF board of directors' policies;

(ii) Serve as a member of the Directorate of the FICO, pursuant to section 21(b)(1)(A) of the Bank Act (12 U.S.C. 1441(b)(1)(A)); and

(iii) Serve as a member of the Directorate of the REFCORP, pursuant to section 21B(c)(1)(A) of the Bank Act (12 U.S.C. 1441b(c)(1)(A)).

(5) Review and approve all contracts of the OF; and

(6) Assume any other responsibilities that may from time to time be assigned to it by the FHFA.

(e) *No rights created.* Nothing in this part shall create or be deemed to create any rights in any third party.

#### § 1273.9 Audit committee.

(a) *Composition.* The Independent Directors shall serve as the Audit Committee.

(b) *Responsibilities.* (1) The Audit Committee shall be responsible for overseeing the audit function of the OF and the preparation and accuracy of the Bank System's combined financial reports.

(2) For purposes of the combined financial reports, the Audit Committee shall ensure that the Banks adopt consistent accounting policies and procedures such that the information submitted by the Banks to OF may be combined to create accurate and meaningful combined financial reports.

(3) The Audit Committee, in consultation with the FHFA, may

establish common accounting policies and procedures for the information submitted by the Banks to the OF for the combined financial reports where the Committee determines such information provided by the several Banks is inconsistent and that consistent policies and procedures regarding that information are necessary to create accurate and meaningful combined financial reports.

(4) To the extent possible the Audit Committee shall operate consistent with—

(i) The requirements of § 917.7 of this title; and

(ii) The requirements pertaining to audit committee reports set forth in Item 306 of Regulation S-K promulgated by the Securities and Exchange Commission.

(5) The Audit Committee shall oversee internal audit activities, including the selection, evaluation, compensation and, where appropriate, replacement of the internal auditor. The internal auditor shall report directly to the Audit Committee and administratively to executive management.

(6) The Audit Committee shall have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements.

(c) *No delegation.* The Audit Committee may not delegate the responsibilities assigned to it under this section to any person, or to any other committee or sub-committee of the OF board of directors.

#### Appendix A to Part 1273—Exceptions to the General Disclosure Standards

A. *Related-party transactions.* Item 404 of Regulation S-K, 17 CFR 229.404, requires the disclosure of certain relationships and related party transactions. In light of the cooperative nature of the Bank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will disclose the percent of advances to members an officer of which serves as a Bank director, and list the top ten holders of advances in the Bank System and the top five holders of advances by Bank, with a further disclosure indicating which of these members had an officer that served as a Bank director. The combined financial report will also disclose the top ten holders of advances in the Bank System by holding company, where the advances of all affiliates within a holding company are aggregated.

B. *Biographical information.* The biographical information required by Items 401 and 405 of Regulation S-K, 17 CFR 229.401 and 405, will be provided only for members of the OF board of directors,

including the Bank presidents, the chair and vice chair of the board of directors of each Bank, and the Chief Executive Officer of OF.

C. *Compensation.* The information on compensation required by Item 402 of Regulation S-K, 17 CFR 229.402, will be provided only for Bank presidents and the CEO of the OF. Since stock in each Bank trades at par, the OF will not include the performance graph specified in Item 402(1) of Regulation S-K, 17 CFR 229.402(1).

D. *Submission of matters to a vote of stockholders.* No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10-K, 17 CFR 249.310. The only item shareholders vote upon is the annual election of directors.

E. *Exhibits.* The exhibits required by Item 601 of Regulation S-K, 17 CFR 229.601, are not applicable and will not be provided.

F. *Per share information.* The statement of financial information required by Items 301 and 302 of Rule S-K, 17 CFR 229.301 and 302, is inapplicable because the shares of the Banks are subscription capital that trades at par, and the shares expand or contract with changes in member assets or advance levels.

G. *Beneficial ownership.* Item 403 of Rule S-K, 17 CFR 229.403, requires the disclosure of security ownership of certain beneficial owners and management. The combined financial report will provide a listing of the ten largest holders of capital stock in the Bank System and a listing of the five largest holders of capital stock by Bank. This listing will also indicate which members had an officer that served as a director of a Bank. The combined financial report will also disclose the top ten holders of Bank stock in the Bank System by holding company, where the Bank stock of all affiliates within a holding company is aggregated.

4. Add part 1274 to subchapter D to read as follows:

#### PART 1274—FINANCIAL STATEMENTS OF THE BANKS

Sec.

1274.1 Definitions.

1274.2 Audit requirements.

1274.3 Requirements to provide financial and other information to the FHFA and the OF.

**Authority:** 12 U.S.C. 1426, 1431, 4511(b), 4513, 4526(a).

#### § 1274.1 Definitions.

For purposes of this part:

*Audit* means an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

*Audit report* means a document in which an independent accountant indicates the scope the audit made and sets forth an opinion regarding the financial statement taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an



overall opinion cannot be expressed, the reasons therefor shall be stated.

*Bank* written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

*Bank System* means the Federal Home Loan Bank System, consisting of the twelve Banks and the Office of Finance.

*FHFA* means the Federal Housing Finance Agency.

*Financing Corporation* or *FICO* means the Financing Corporation established and supervised by the FHFA under section 21 of the Bank Act (12 U.S.C. 1441).

*Office of Finance* or *OF* has the same meaning as set forth in § 1273.1 of this chapter.

#### § 1274.2 Audit requirements.

(a) Each Bank, the OF and the FICO shall obtain annually an independent external audit of and an audit report on its individual financial statement.

(b) The OF audit committee shall obtain an audit and an audit report on the combined annual financial statements for the Bank System.

(c) All audits must be conducted in accordance with generally accepted auditing standards and in accordance with the most current government auditing standards issued by the Office of the Comptroller General of the United States.

(d) An independent, external auditor must meet at least twice each year with the audit committee of each Bank, the audit committee of OF, and the FICO Directorate.

(e) FHFA examiners shall have unrestricted access to all auditors' work papers and to the auditors to address substantive accounting issues that may arise during the course of any audit.

#### § 1274.3 Requirement to provide financial and other information to the FHFA and the OF.

In order to facilitate the preparation by the OF of combined Bank System annual and quarterly reports, each Bank shall provide to the OF in such form and within such timeframes as the FHFA or the OF shall specify, all financial and other information and assistance that the OF shall request for that purpose. Nothing in this section shall contravene or be deemed to circumscribe in any manner the authority of the FHFA to obtain any information from any Bank related to the preparation or review of any financial report.

Dated: July 29, 2009.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

[FR Doc. E9-18567 Filed 8-3-09; 8:45 am]

**BILLING CODE P**

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1282

**RIN 2590-AA27**

#### Duty To Serve Underserved Markets for Enterprises

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Advance notice of proposed rulemaking and request for comment.

**SUMMARY:** Section 1129 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to establish a duty for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises) to serve three underserved markets—manufactured housing, affordable housing preservation, and rural areas—in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing in those markets. Section 1335 of the Safety and Soundness Act, as amended, requires the Federal Housing Finance Agency (FHFA), beginning in 2010, to establish a manner for: evaluating whether and to what extent the Enterprises have complied with the duty to serve underserved markets; and rating the extent of compliance. To assist FHFA in rulemaking to implement the duty to serve underserved markets, FHFA seeks comment on the characteristics and types of Enterprise transactions and activities that should be considered and how such transactions and activities should be evaluated and rated, for purposes of determining the Enterprises' performance of the duty to serve underserved markets.

**DATES:** Written comments must be received on or before: September 18, 2009.

**ADDRESSES:** You may submit your comments, identified by regulatory information number (RIN) 2590-AA27, by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is:

Alfred M. Pollard, General Counsel,  
Attention: Comments/RIN 2590-AA27,  
Federal Housing Finance Agency,  
Fourth Floor, 1700 G Street, NW.,  
Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA27, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov). Please include "RIN 2590-AA27" in the subject line of the message.

- *Federal eRulemaking Portal:* <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 e-mail to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by FHFA. Please include "RIN 2590-AA27" in the subject line of the message.

#### FOR FURTHER INFORMATION CONTACT:

Nelson Hernandez, Senior Associate Director, Housing Mission and Goals, (202) 408-2819, Brian Doherty, Acting Manager, Housing Mission and Goals—Policy, (202) 408-2991, or Paul Manchester, Acting Manager, Housing Mission and Goals—Quantitative Analysis, (202) 408-2946 (these are not toll-free numbers); Lyn Abrams, Attorney-Advisor, (202) 414-8951, Kevin Sheehan, Attorney-Advisor, (202) 414-8952, or Sharon Like, Associate General Counsel, (202) 414-8950 (these are not toll-free numbers), Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Comments

FHFA invites comments on all aspects of the Advance Notice of Proposed Rulemaking. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <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 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to