

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1202

RIN 2590-AA05

Freedom of Information Act

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing a regulation and soliciting comments on implementation of the Freedom of Information Act (FOIA) (U.S.C. 552), establishing procedures for public disclosure of information required to be disclosed under the FOIA, and procedures to protect from disclosure business confidential and trade secret information, as appropriate.

DATES: Comments regarding this Notice of Proposed Rulemaking must be received in writing on or before November 10, 2008. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit your comments on the proposed rulemaking, identified by "RIN 2590-AA05," by any of the following methods:

- *E-mail:* RegComments@fhfa.gov. Please include "RIN-2590-AA05" in the subject line of the message.
- *Any U.S. Mail service, United Parcel Service, Federal Express, or other commercial delivery service, addressed to:* Alfred M. Pollard, General Counsel, (Office of Federal Housing Enterprise Oversight) (OFHEO) and Christopher Curtis, General Counsel (Federal Housing Finance Board (FHFB)), Attention: Comments/RIN 2590-AA05, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivery/Courier to:* Alfred M. Pollard, General Counsel (OFHEO) and Christopher Curtis, General Counsel (FHFB), Attention: Comments/RIN 2590-AA05, 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 3 p.m.

FOR FURTHER INFORMATION CONTACT:

Mark D. Laponsky, Deputy General Counsel, telephone (202) 414-3832, (not a toll free number), 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 Federal Housing Finance Agency (FHFA) invites comment on all aspects of the proposed regulation, and will take all relevant comments into consideration before issuing the final regulation.

Instructions: FHFA requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft Word® or in a portable document format (PDF) on 3.5" disk or CD-ROM. All submissions received must include the agency name or Regulatory Information Number (RIN) for this rulemaking. Copies of all comments received will be posted without change on the internet web site, <http://www.ofheo.gov>, and will include any personal information provided. 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 (OFHEO) at (202) 414-3751.

II. Background

The Federal Housing Finance Regulatory Reform Act of 2008 (Act) (Pub. L. 110-289), established FHFA as an independent agency of the Federal Government to ensure that the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal Home Loan Banks (collectively, the Regulated Entities) are capitalized adequately and operate safely and soundly and in compliance with applicable laws, rules and regulations.

III. Section-by-Section Analysis

Section 1202.1 Why did FHFA Issue this Regulation?

This section describes the purpose of the part to implement the Freedom of Information Act (FOIA), explaining FHFA's general policies and procedures for disclosing information under the FOIA.

Section 1202.2 What do the Terms in this Regulation Mean?

This section sets forth definitions of many terms relevant to the proposed regulation.

Section 1202.3 What Information can I Obtain through FOIA?

This section describes for the public the type of information that may be obtained under the FOIA.

Section 1202.4 What Information is Exempt from Disclosure?

This section describes records that FHFA does not have to disclose even if requested.

Section 1202.5 How do I Request Information from FHFA under FOIA?

This section explains what a person must do to submit a valid request to FHFA to disclose records. It describes the information to provide; allowing FHFA to identify the records sought and determine whether they can be disclosed.

Section 1202.6 What if my Request does not have all the Information FHFA Requires?

This section explains that FHFA will give requesters an opportunity to modify or amend a request that is incomplete or insufficient. It also explains how FHFA will treat such requests until adequate information is received.

Section 1202.7 How will FHFA Respond to my FOIA Request?

This section describes FHFA's multi-track method of processing requests and the time within which FHFA will respond to requests. It also explains that FHFA will grant or deny requests in writing, provide reasons if a request is denied in whole or in part, refer the request to another agency if it is appropriate to do so, and explain the right of appeal.

Section 1202.8 *If the Records I Request Contain Confidential Commercial Information, what Procedures will FHFA Follow?*

This section explains how FHFA complies with Executive Order No. 12,600 and describes special procedures required before FHFA discloses confidential commercial information in response to a FOIA request.

Section 1202.9 *How do I Appeal a Response Denying my FOIA Request?*

This section describes the process by which a requester whose request is denied in whole or in part may appeal. It explains when and how to appeal and how and within what time limits FHFA will respond to appeals.

Section 1202.10 *Will FHFA Expedite My Request or Appeal?*

This section explains how a person can ask FHFA to expedite a request or your appeal. It describes the reasons that justify expediting a request or an appeal and the time within which FHFA will notify the person that the request or appeal will or will not be expedited.

Section 1202.11 *What Will It Cost To Get the Records I Requested?*

This section explains when FHFA will charge for searching for and providing copies of records and how to identify the costs FHFA will charge.

Section 1202.12 *Is There Anything Else I Need To Know About FOIA Procedures?*

This section explains that FHFA's FOIA regulation does not create any independent rights, but provides procedures for exercising rights granted by the FOIA.

Regulatory Impacts

Paperwork Reduction Act

The proposed regulations in this part do not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small

entities (5 U.S.C. 605(b)). The FHFA has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The FHFA certifies that the proposed regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the internal operations and legal obligations of the FHFA.

List of Subjects in 12 CFR Part 1202

Appeals, Confidential commercial information, Disclosure, Exemptions, Fees, Final action, Freedom of Information Act, Judicial review, Records, Requests.

Accordingly, for the reasons stated in the preamble, the FHFA proposes to amend 12 CFR chapter XII by adding part 1202 to subchapter A to read as follows.

PART 1202—FREEDOM OF INFORMATION ACT

Sec.

- 1202.1 Why did FHFA issue this part?
- 1202.2 What do the terms in this part mean?
- 1202.3 What information can I obtain through FOIA?
- 1202.4 What information is exempt from disclosure?
- 1202.5 How do I request information from FHFA under FOIA?
- 1202.6 What if my request does not have all the information FHFA requires?
- 1202.7 How will FHFA respond to my FOIA request?
- 1202.8 If the records I request contain confidential commercial information, what procedures will FHFA follow?
- 1202.9 How do I appeal a response denying my FOIA request?
- 1202.10 Will FHFA expedite my request or appeal?
- 1202.11 What will it cost to get the records I requested?
- 1202.12 Is there anything else I need to know about FOIA procedures?

Authority: Public Law 110–289, 122 Stat. 2654; 5 U.S.C. 301, 552; 12 U.S.C. 4526; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

§ 1202.1 Why did FHFA issue this part?

(a) The Freedom of Information Act (FOIA) (5 U.S.C. 552), is a federal law that requires the Federal Housing Finance Agency (FHFA) and other government agencies to disclose records to the public.

(b) This part explains the rules that FHFA follows when processing and responding to requests for records under the FOIA. It also explains what you must do to request records from FHFA under the FOIA. You should read this part together with the FOIA, which

explains in more detail your rights and the records FHFA may release to you.

(c) If you want to request information about yourself under the Privacy Act (5 U.S.C. 552a), you should file your request using FHFA's Privacy Act regulations at part 1204 of this Title. If you file a FOIA request for information about yourself, FHFA will process it as a request under the separate Privacy Act rules.

(d) FHFA may make public information that it routinely publishes or discloses when performing its activities without following these procedures.

§ 1202.2 What do the terms in this part mean?

Some of the terms you need to understand while reading the regulations in this part are—

Appeals Officer or *FOIA Appeals Officer* means a person designated by the Director of the Federal Housing Finance Agency (FHFA) to process appeals of denials of requests for FHFA records under the FOIA.

Confidential commercial information means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

Days, unless stated as “calendar days,” are working days and do not include Saturdays, Sundays, and federal holidays. If the last day of any period prescribed herein falls on a Saturday, Sunday, or federal holiday, the last day of the period will be the next working day that is not a Saturday, Sunday, or federal holiday.

Direct costs means the expenses, including for contract services, incurred by FHFA in search time, or reviewing and duplicating records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures FHFA actually incurs in reviewing records to respond to the request. Direct costs include the cost of the time of the employee performing the work, the cost of any computer searches, and the cost of operating duplication equipment. Direct costs do not include overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

Employee, for the purposes of this part, means any person holding an appointment to a position of employment with FHFA or any person who formerly held such an appointment; any conservator appointed

by FHFA; or any agent or independent contractor acting on behalf of FHFA, even though the appointment or contract has terminated.

FHFA means the Federal Housing Finance Agency and includes its predecessor agencies, the Office of Federal Housing Enterprise Oversight (OFHEO), and the Federal Housing Finance Board (FHFB). FHFA is an agency responsible for the regulation or supervision of financial institutions.

FOIA Officer and *Chief FOIA Officer* are persons designated by the Director of FHFA to process and respond to requests for FHFA records under the FOIA. The mailing address for the FOIA Officer or the Chief FOIA Officer is FHFA, 1700 G Street, NW., Washington, DC 20552.

Readily reproducible means that the requested record or records exist in electronic format and can be downloaded or transferred intact to a computer disk, tape, or other electronic medium with equipment and software currently in use by FHFA.

Record means information or documentary material FHFA maintains in any form or format, including electronic, which FHFA—

(1) Created or received under federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of FHFA's operations or activities or because of the value of the information it contains; and

(3) Controls at the time it receives a request for disclosure.

Regulated entities means the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal National Mortgage Association ("Fannie Mae"), any Federal Home Loan Bank and/or any affiliate thereof that is subject to the regulatory authority of FHFA.

Requester means any person seeking access to FHFA records under the FOIA.

Search time means the amount of time spent by or on behalf of FHFA in attempting to locate records responsive to a request, manually, or by electronic means, including page-by-page or line-by-line identification of responsive material within a record or extraction of electronic information from electronic storage media.

Submitter means any person or entity providing confidential information to the government. The term submitter includes, but is not limited to corporations, state governments, and foreign governments.

Unusual circumstances means the need to—

(1) Search for and collect records from agencies, offices, facilities, or locations

that are separate from the office processing the request;

(2) Search, review, and duplicate a voluminous amount of separate and distinct records in order to process a single request; or

(3) Consult with another agency or among two or more components of FHFA that have a substantial interest in the determination of a request.

§ 1202.3 What information can I obtain through FOIA?

(a) *General*. FHFA generally follows a policy prohibiting employees from releasing or disclosing confidential or otherwise non-public information that FHFA possesses, except as authorized by this part or by the Director of FHFA, when the disclosure is necessary for the performance of official duties

(b) *Records*. You may request that FHFA disclose to you its records on a subject of interest to you. The FOIA only requires the disclosure of records. It does not require FHFA to create compilations of information or to provide narrative responses to questions or queries. Some information is exempt from disclosure.

(c) *Reading Rooms*. FHFA maintains electronic and physical reading rooms.

(1) You may visit the physical reading room for FHFA and OFHEO records at 1700 G Street, NW., Fourth Floor, Washington, DC 20552, open to the public from 9 a.m. to 3 p.m. each business day. For an appointment, contact the FOIA Officer by calling 202-414-6425 or by e-mail at foia@fhfa.gov or foia.office@ofheo.gov.

(2) You may visit the physical reading room for FHFA and FHFB records and at 1675 Eye Street, NW., 4th Floor, Washington, DC 20006, open to the public from 9 a.m. to 3 p.m. each business day. For an appointment, contact the FOIA Officer by calling 202-408-2505 or by e-mail at foia@fhfa.gov or foia@fhfb.gov.

(3) You can find FHFA's electronic reading rooms by visiting FHFA's Web site at <http://www.fhfa.gov> and linking to its predecessor agencies' Web sites: <http://www.ofheo.gov> (Office of Federal Housing Enterprise Oversight); and <http://www.fhfb.gov> (Federal Housing Finance Board).

(4) Each reading room has the following records created by FHFA or its predecessor agencies, after November 1, 1996, and current indices to all of the following records created by FHFA or its predecessor agencies before or after November 1, 1996—

(i) Final opinions or orders issued by FHFA, or its predecessor agencies in adjudication;

(ii) Statements of policy and interpretation that have been adopted by FHFA or its predecessor agencies that are not published in the **Federal Register**;

(iii) FHFA or its predecessor agencies administrative staff manuals and instructions to staff that affect a member of the public, and that are not exempt from disclosure under FOIA; and

(iv) Copies of all records released pursuant to this subpart that FHFA determines have become or are likely to become the subject of subsequent requests for substantially the same records.

§ 1202.4 What information is exempt from disclosure?

(a) *General*. Unless the Director of FHFA, his or her designee, any FHFA regulation, or a statute specifically authorizes disclosure, FHFA will not release records of matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and is in fact properly classified pursuant to such Executive order.

(2) Related solely to FHFA's internal personnel rules and practices.

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Contained in inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with FHFA.

(6) Contained in personnel, medical or similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or

foreign agency or authority or any private institution or an entity that is regulated and examined by FHFA that furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Discretion to Apply Exemptions.* Although records or parts of them may be exempt from disclosure, FHFA may elect under the circumstances of any particular request not to apply an exemption. This election does not generally waive the exemption and it does not have precedential effect. FHFA may still apply the exemption to any other records or portions of records, regardless of when the request is received.

(c) *Redacted Portion.* If a requested record contains exempt information and information that can be disclosed and the portions can reasonably be segregated from each other, the portion of the record that can be disclosed will be released to the requester after FHFA deletes the exempt portions. If it is technically feasible, FHFA will indicate the amount of the information deleted at the place in the record where the deletion is made and include a notation identifying the exemption that was applied, unless including that indication would harm an interest protected by an exemption.

(d) *Exempt and Redacted Material.* FHFA is not required to provide an itemized index correlating each withheld document (or redacted portion) with a specific exemption justification.

(e) *Disclosure to Congress.* This section does not allow FHFA to withhold any information from, or to prohibit the disclosure of any information to, the Congress or any

congressional committee or subcommittee.

§ 1202.5 How do I request information from FHFA under FOIA?

(a) *Where to Send Your Request.* FOIA requests must be in writing. You may make a request for FHFA records by writing directly to the FOIA Office through electronic mail, regular mail, or fax. The electronic mail address is: foia.office@fhfa.gov. The regular mail address is: FOIA Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The fax number is: (202) 414-8917. You can help FHFA process your request by marking electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet "FOIA Request." You may find the FHFA's "Freedom of Information Act Reference Guides," available electronically on the FHFA's Web site, <http://www.fhfa.gov>, helpful in making your request.

(b) *Provide Your Name and Address.* Your request must include your full name, your address and, if different, the address at which FHFA is to notify you about your request; a telephone number at which you can be reached during normal business hours, and an electronic mail address, if any.

(c) *Request is Under FOIA.* Your request must have a statement identifying it as being made under FOIA.

(d) *Your FOIA Status.* If you are submitting your request as a "commercial use" requester, an "educational institution" requester, a "non-commercial scientific institution" requester, or a "representative of the news media" for the purposes of the fee provisions of FOIA, your request must include a statement specifically identifying your status.

(e) *Describing the Records you Request.* You must describe the records that you seek in enough detail to enable FHFA personnel to locate them with a reasonable amount of effort. Your request should include as much specific information as possible that you know about each record you request, such as the date, title or name, author, recipient, subject matter, and file designations or descriptions of the record.

(f) *How You want the Records Produced to You.* Your request must tell FHFA whether you will inspect the records before duplication or want them duplicated and furnished without inspection.

(g) *Agreement to Pay Fees.* Your FOIA request is an agreement by you to pay all applicable fees charged under § 1202.11, up to \$100.00, unless you seek a fee waiver. When making a

request, you may specify a higher or lower amount you will pay without consultation. Your inability to pay a fee does not justify granting a fee waiver.

(h) *Valid Requests.* FHFA will only process valid requests. A valid request must meet all the requirements of this section.

§ 1202.6 What if my request does not have all the information FHFA requires?

If the FHFA determines that your request does not reasonably describe the records you seek, is overly broad, or otherwise lacks required information, we will inform you in writing to explain why your request is incomplete or insufficient and give you 30 calendar days to modify your request to meet all the requirements. The first request for additional information tolls the 20 days period for FHFA to respond to your request under § 1202.7.

(a) If you respond with an amended request, FHFA will process the amended request as a new request.

(b) If you do not respond or provide additional information within the time allowed, or if the additional information you provide is still incomplete or insufficient, FHFA will consider the request withdrawn.

(c) If the additional information you are required to provide concerns fees that may be incurred or an agreement to pay fees, FHFA may toll the 20 days response time under § 1202.7, as often as necessary to obtain the additional information.

§ 1202.7 How will FHFA respond to my FOIA request?

(a) *Authority to Grant or Deny Requests.* The FOIA Officer and the Chief FOIA Officer are authorized to grant or deny any request for FHFA records.

(b) *Multi-Track Request Processing.* FHFA uses a multi-track system to process FOIA requests. This means that FOIA requests are processed based on their complexity. When FHFA receives your request, it is assigned to a Standard Track or Complex Track. FHFA will notify you if your request is assigned to the Complex Track as described in paragraph (e) of this section for extensions of time.

(1) *Standard Track.* FHFA assigns FOIA requests that are routine and require little or no search time, review, or analysis to the Standard Track. We respond to these requests within 20 days after receipt, in the order in which they are received. If FHFA determines while processing your Standard Track request, that it is more appropriately a Complex Track request, we will reassign it to the Complex Track and notify you

as described in paragraph (e) of this section for extensions of time.

(2) *Complex Track.* FHFA assigns requests that are not routine to the Complex Track. Complex Track requests are those to which FHFA determines that the response will be voluminous, involve two or more FHFA units, require consultation with other agencies or entities, require searches of archived documents; or when FHFA determines that the request seeks confidential commercial information as described in § 1202.8, or will require an unusually high level of effort to search for, review and/or duplicate records, or will cause undue disruption to the day-to-activities of FHFA regulating and supervising the regulated entities. FHFA will respond to Complex Track requests as soon as reasonably possible, regardless of the date of receipt.

(c) *Referrals to Other Agencies.* When FHFA receives a request seeking records that originated in another Federal Government agency, FHFA refers the request to the other agency for response. FHFA will notify you if your request is referred to another agency.

(d) *Responses to FOIA Requests.* FHFA will respond to your request by granting or denying it in full, or by granting and denying it in parts. FHFA's response will be in writing. In determining which records are responsive to your request, we ordinarily will include only records we possess as of the date of the request.

(1) *Requests that FHFA Grants.* If FHFA grants your request in full, the response will include the requested records or details about how FHFA will provide them to you, and the amount of any fees charged.

(2) *Requests that FHFA Denies or Grants and Denies in Parts.* If FHFA denies your request in full or grants and denies separate parts of it, the response will be signed by the official responding. If we deny your request in whole or in part because a requested record does not exist or cannot be located, is not readily reproducible in the form or format you sought, is not subject to the FOIA, or is exempt from disclosure, the written response will include the requested records, if any, the amount of any fees charged, the reasons for any denial, and a notice and description of your right to file an administrative appeal under § 1202.9.

(e) *Format and Delivery of Disclosed Records.* If FHFA grants, in whole or in part, your request for disclosure of records under FOIA, we will make the records available to you in the form or format you requested, if it is readily reproducible in that form or format. We will send them to the address you

provided by regular U.S. Mail or by electronic mail unless we agree with you on alternate arrangements, such as your agreement to pay express or expedited delivery service fees or to pick up records at our office.

(f) *Extensions of Time.* In unusual circumstances, FHFA may extend the time limit in paragraph (b) of this section for no more than ten (10) days and notify you of—

(1) The reason for the extension;

(2) The date on which the determination in accordance with paragraph (b) of this section is expected; and

(3) The opportunity to limit the scope of the request so that the FHFA may process it on the simple track, or arrange an alternative time period for processing the request or a modified request.

§ 1202.8 If the records I request contain confidential commercial information, what procedures will FHFA follow?

(a) *General.* FHFA will not disclose confidential commercial information in response to your FOIA request except as described in this section.

(b) *Designation of Confidential Commercial Information.* Submitters of commercial information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of the information they deem to be protected under 5 U.S.C. 552(b)(4) and section 1202.4(a)(4). Any such designation expired ten (10) years after they were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure Notification.* Except as provided in paragraph (e) of this section, if your FOIA request encompasses confidential commercial information, FHFA will, prior to disclosure of the information and to the extent permitted by law, provide prompt written notice to a submitter that confidential commercial information was requested when—

(1) The submitter has in good faith designated the information as confidential commercial information protected from disclosure under 5 U.S.C. 552(b)(4) and section 1202.4(a)(4); or

(2) FHFA has reason to believe that the request seeks confidential commercial information, the disclosure of which may result in substantial competitive harm to the submitter.

(d) *Content of Predisclosure Notification.* When FHFA sends a predisclosure notification to a submitter, it will contain—

(1) A description of the exact nature of the confidential commercial information requested or copies of the records or portions thereof containing the confidential business information; and

(2) An opportunity to object to disclosure within ten (10) days by providing to FHFA a detailed written statement demonstrating all reasons the submitter opposes disclosure.

(e) *Exceptions to Predisclosure Notification.* FHFA is not required to send a predisclosure notification if—

(1) FHFA determines that information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law, other than the FOIA;

(4) The information requested is not designated by the submitter as confidential commercial information pursuant to this section; or

(5) The designation made by the submitter, under paragraph (b) of this section, appears obviously frivolous; except that, FHFA will provide the submitter with written notice of any final decision to disclose the designated confidential commercial information within a reasonable number of days prior to a specified disclosure date.

(f) *Submitter's Objection to Disclosure.* A submitter may object to disclosure within ten (10) days after date of the Predisclosure Notification, or such other time period that FHFA may allow, by delivering to FHFA a statement demonstrating all grounds on which it opposes disclosure, and all reasons supporting its contention that the information should not be disclosed. The submitter's objection must contain a certification by the submitter, or an officer or authorized representative of the submitter, that the grounds and reasons presented are true and correct to the best of the submitter's knowledge. The submitter's objection may itself be subject to disclosure under the FOIA.

(g) *Notice of Intent to Disclose Information.* FHFA will consider carefully all grounds and reasons provided by a submitter objecting to disclosure. If FHFA decides to disclose confidential commercial information over the objection of the submitter, it will provide to the submitter, at least ten (10) days before the date of disclosure, written notice containing—

(1) A statement of the reasons for not sustaining the submitter's objections to disclosure;

(2) A description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date.

(h) *Notice to Requester.* FHFA will give a requester whose request encompasses confidential commercial information the following notices—

(1) At the time a Predisclosure Notification is provided to the submitter, written notice that the request encompasses confidential commercial information that may be exempt from disclosure under 5 U.S.C. 552(b)(4) and section 1202.4(a)(4) and that the submitter of the information has been given the opportunity to comment on the proposed disclosure of the information; and

(2) At the time a Notice of Intent to Disclose is provided to the submitter, a copy of the Notice of Intent to Disclose, at least days before the specified disclosure date.

(i) *Notice of FOIA Lawsuit.* FHFA will promptly notify the submitter whenever a requester files suit seeking to compel disclosure of the submitter's confidential commercial information.

§ 1202.9 How do I appeal a response denying my FOIA request?

(a) *Right of Appeal.* If FHFA denied your request in whole or in part, you may appeal the denial to: FOIA Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. If you use a mail, express, or courier delivery service to file your appeal, include a clear marking identifying it as a "FOIA APPEAL." You may file your appeal electronically by sending it to: foia@fhfa.gov with "FOIA Appeal" in the subject line. You may file an appeal by facsimile addressed to the attention of the FOIA Appeals Officer at (202) 414-6504, clearly identifying on the cover sheet that it is a "FOIA Appeal."

(b) *Timing, Form, Content and Receipt of an Appeal.* Your appeal must be written and submitted within 30 calendar days after you received FHFA's response denying your request. Your appeal must include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments you believe support disclosure of the requested record. FHFA will not consider an improperly addressed appeal to have been received for the purposes of the 20 days time period of paragraph (d) of this section, until it is actually received by the Appeals Officer, or would have been received by the Appeals Officer if due diligence were exercised.

(c) *Extensions of Time to Appeal.* If you need more time to file your appeal, you may request an extension of time of no more than ten (10) days in which to file your appeal, but only if your request

is made within the original 30 calendar days time period for filing the appeal. The FOIA Appeals Officer has discretion to grant extensions of time to file appeals.

(d) *Final Action on Appeal.* FHFA's determination on your appeal will be in writing, signed by the FOIA Appeals Officer, and mailed within 20 days after the appeal is received or by the last day of the last extension under paragraph (e) of this section. The determination of an appeal is the final action of FHFA on a FOIA request. A determination—

(1) Affirming in whole or in part the denial of a request and including a brief statement of the reason or reasons for affirmance, including each FOIA exemption relied on.

(2) Reversing the denial of a request in whole or in part, requiring the request to be processed promptly in accordance with the determination.

(3) Remanding a request to the FOIA Officer for re-processing, stating the time limits for responding to the remanded request.

(e) *Notice of Delayed Determinations on Appeal.* If FHFA cannot mail a determination on your appeal within the time limit, the Appeals Officer will continue to process the appeal and upon expiration of the time limit, will inform you the reason for the delay and the date on which a determination may be expected to be mailed. In this notice of delay, the FOIA Appeals Officer may request that you forebear seeking judicial review until a final determination of the appeal.

(f) *Judicial Review.* If the denial of your request for records is upheld in whole or in part, or if a determination on the appeal has not been mailed at the end of the 20 days period in paragraph (d) of this section, or the last extension thereof, you may seek judicial review under 5 U.S.C. 552(a)(4).

§ 1202.10 Will FHFA expedite my request or appeal?

(a) *Applications for Expedited Processing.* You may apply for expedited processing of an initial request or of an appeal. Your application must be in writing. FHFA will grant expedited processing, and give the request or appeal priority if your application demonstrates a compelling need for expedited processing by showing—

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal government activity if you are a person

primarily engaged in disseminating information;

(3) The loss of substantial due process or rights;

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity, affecting public confidence; or

(5) Humanitarian need.

(b) *Certification of Compelling Need.* Your application for expedited processing must include a statement certifying that the reasons you present to demonstrate a compelling need are true and correct to the best of your knowledge.

(c) *Determination on Application.* FHFA will notify you within ten (10) days of receipt of your application whether expedited processing has been granted. If your application is denied, you may appeal under § 1202.9.

§ 1202.11 What will it cost to get the records I requested?

(a) *Assessment of Fees, Generally.* FHFA will assess you for fees covering the direct costs of responding to your request and costs for duplicating records, except as otherwise provided in a statute with respect to the determination of fees that may be assessed for disclosure, search time, or review of particular records.

(b) *Assessment of Fees, Categories of Requesters.* The fees that FHFA may assess vary depending on the type of request or the type of requester you are—

(1) *Commercial Use.* If you request records for a commercial use, the fees that FHFA may assess are limited to FHFA's operating costs incurred in search time, and/or to review and duplicate records.

(2) *Educational Institution, Noncommercial Scientific Institution, Representative of the News Media.* If you are not requesting records for commercial use and you are an educational institution, a noncommercial scientific institution or a representative of the news media, the fees that FHFA may assess are limited to FHFA's costs incurred for duplication in excess of 100 pages, or an electronic equivalent of 100 pages.

(3) *Other.* If neither paragraph (b)(1) nor paragraph (b)(2) of this section applies, the fees FHFA may assess you are limited to the costs FHFA incurs in search time and review in excess of two hours and to duplicate in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) *Fee Schedule.* FHFA will maintain a current schedule of fees on its Web site at: <http://www.fhfa.gov>.

(d) *Notice of Anticipated Fees in Excess of \$100.00.* When FHFA determines or estimates that the fees chargeable to you will exceed \$100.00, FHFA will notify you of the actual or estimated amount of fees you will incur, unless you earlier indicated your willingness to pay fees as high as those anticipated. When you are notified that the actual or estimated fees exceed \$100.00, your FOIA request will not be considered received by FHFA until you agree to pay the anticipated total fee.

(e) *Advance Payment of Fees.* FHFA may request that you pay estimated fees or a deposit in advance of responding to your request. If FHFA requests advance payment or a deposit, your request will not be considered received by FHFA until the advance payment or deposit is received. FHFA will request advance payment or a deposit only if—

(1) The fees are likely to exceed \$500.00. If it appears that the fees will exceed \$500.00, FHFA will notify you of the likely cost and obtain satisfactory assurance of full payment if you have a history of prompt payment of FOIA fees to FHFA. If you do not have a history of payment, or if the estimate of fees exceeds \$1,000.00, FHFA may require an advance payment of fees in an amount up to the full estimated charge that will be incurred; or

(2) You previously failed to pay a fee to FHFA in a timely fashion, i.e., within 30 calendar days of the date of a billing. FHFA may require you to make advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request. If you have an outstanding balance due from a prior request, FHFA may require you to pay the full amount owed plus any applicable interest, as provided in paragraph (f) of this section, or demonstrate that the fee owed has been paid, as well as payment of the full amount of anticipated fees before processing your request.

(f) *Interest.* FHFA may charge you interest on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent. Once a fee payment has been received by FHFA, even if not processed, FHFA will stay the accrual of interest. Interest charges shall be assessed at the rate prescribed by 31 U.S.C. 3717 and shall accrue from the date of the billing.

(g) *FHFA Assistance to Reduce Costs.* If FHFA notifies you of estimated fees exceeding \$100.00 or requests advance payment or a deposit, you will have an opportunity to consult with FHFA staff to modify or reformulate your request to meet your needs at a lower cost.

§ 1202.12 Is there anything else I need to know about FOIA procedures?

The FOIA regulations in this part do not and shall not be construed to create any right or to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under FOIA. This part only provides procedures for requesting records under FOIA.

Dated: September 30, 2008.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E8-23517 Filed 10-9-08; 8:45 am]

BILLING CODE 8070-01-P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1250

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1773

RIN 2590-AA09

Flood Insurance

AGENCIES: Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is requesting public comments on issuance of a proposed Flood Insurance regulation. The proposed regulation would codify the authority and responsibility of FHFA to oversee and enforce the statutory requirements affecting the operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under the Flood Disaster Protection Act of 1973, as amended, and to effect congressionally mandated adjustments to the civil money penalties applicable to violations of that law.

DATES: Comments on the proposed regulation must be received in writing on or before December 9, 2008. For additional information, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: You may submit your comments on the proposed regulation, identified by regulatory information number (RIN) 2590-AA09, 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 (Office of Federal Housing Enterprise Oversight (OFHEO)), Attention: Comments/RIN 2590-AA09, 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 (OFHEO), Attention: Comments/RIN 2590-AA09, 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 (OFHEO) and may be sent by e-mail at RegComments@FHFA.gov. Please include "RIN 2590-AA09" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Andra Grossman, Counsel, telephone (202) 343-1313 (not a toll-free number); 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 Federal Housing Finance Agency (FHFA) invites comments on all aspects of the proposed regulation, and will take all comments into consideration before issuing the final regulation. FHFA requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5" disk or CD-ROM.

Copies of all comments will be posted on the agency internet Web site at: <https://www.ofheo.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 (OFHEO) at (202) 414-6924.

II. Background

A. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Act) to establish FHFA as an independent agency of the