

# Rules and Regulations

Federal Register

Vol. 75, No. 17

Wednesday, January 27, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1233

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

### 12 CFR Part 1731

RIN 2590-AA11

### Reporting of Fraudulent Financial Instruments

**AGENCY:** Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final regulation.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing a final regulation that requires the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and each Federal Home Loan Bank (collectively, regulated entities) to submit a timely report to FHFA upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. The final regulation also requires the regulated entities to establish and maintain internal controls, policies, procedures, and operational training programs to ensure that any fraudulent loan or financial instrument or possible fraudulent loan or financial instrument is discovered and reported.

**DATES:** *Effective Date:* February 26, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Andra Grossman, Senior Counsel, Office of the General 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. Statutory and Regulatory Background

The Housing and Economic Recovery Act of 2008, Public Law 110-289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) and transferred to the Federal Housing Finance Agency (FHFA) the supervisory and oversight responsibilities over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, regulated entities). FHFA is responsible for ensuring that the regulated entities operate in a safe and sound manner and carry out their public policy missions.

Section 1379E of the Safety and Soundness Act (section 1379E) (12 U.S.C. 4642(a)) subjects the regulated entities to both fraud reporting and internal control requirements. Under this statutory provision, the Director of FHFA (Director) must require a regulated entity to submit a timely report upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. Additionally, the Director must require each regulated entity to establish and maintain procedures designed to discover any such transactions.

Section 1379E also provides each regulated entity and any entity-affiliated party protection from liability in making a report or requiring another to make a report if it acts in good faith. This protection extends to any liability arising under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for the submission of a report or for the failure to notify persons who are the subject of or identified in a report.

On June 17, 2009, FHFA published for comment a proposed regulation setting forth proposed reporting requirements

with respect to fraudulent or suspected fraudulent financial instruments.<sup>1</sup> All comments received have been posted to the FHFA Web site at <http://www.fhfa.gov>.

### II. Final Regulation

The final regulation implements the provisions in the proposed regulation with clarifying revisions that are made in response to comments received. The Mortgage Fraud Reporting regulation at 12 CFR part 1731 issued by the Office of Federal Housing Enterprise Oversight will be removed after the final regulation is effective.

FHFA received comments from the Enterprises and ten Federal Home Loan Banks. All comments were taken into consideration. A discussion of the significant comments as they relate to the final sections of the regulation follows.

#### *Section 1233.1 Purpose*

Several commenters requested that FHFA clarify which purchase and sale activities are subject to the reporting requirements. Specifically, the Banks sought clarification on whether the regulation applies to mortgage loans held as collateral for advances or the Affordable Housing Program.

FHFA clarifies that the purpose of this regulation is to implement the provisions of the Safety and Soundness Act, including the requirements of section 1379E, with respect to the discovery and reporting of fraud in furtherance of the supervisory responsibilities of FHFA; that is, ensuring the safe and sound operations of the regulated entities. To meet that goal, FHFA must receive timely information on actual or possible fraud on all programs and products. The information provided will be the subject of review by FHFA examiners as well as other appropriate FHFA staff. The information will also assist FHFA in assessing internal controls, management of risks, including reputation risk, and other factors relevant to the safe and sound operation of the regulated entities. FHFA's oversight of programs to discover fraud and the sharing of information with law enforcement authorities will reassure the public that the regulated entities are vigilant in discovering and reporting fraudulent practices, and can have a deterrent

<sup>1</sup> 74 FR 28636.

effect on financial crime. It is for all of the above reasons that FHFA will apply the regulation to all programs and products of the regulated entities.

When a regulated entity discovers fraud or suspected possible fraud, either through its internal controls or notification by outside parties, the fraud or suspected possible fraud is to be reported. For example, if a substitution is made in a pool of mortgage backed securities (MBS) and the regulated entity is notified that the substitution was made *due to fraud*, a report must be made. Due diligence requirements for the regulated entities to discover fraud or possible fraud will be provided in FHFA policy guidance for specific programs and products, such as collateral, MBS and whole loans.

The scope of this regulation is further clarified by the addition of the definitions of the term “financial instrument” and the term “purchased or sold or relating to a purchase or sale” in § 1233.2. See the discussion below.

One commenter suggested that the language of § 1233.1 conform to the language of section 1379E. FHFA has modified the proposed language of § 1233.1 to reflect more closely the language of section 1379E as well as referencing the Safety and Soundness Act generally.

#### Section 1233.2 Definitions

**Entity-affiliated party.** The term “entity-affiliated party” is used in proposed § 1233.5. Section 1233.5 restates the language of section 1379E(b) by providing protection to regulated entities and entity-affiliated parties from liability in connection with reporting fraud or possible fraud. One commenter questioned whether FHFA intended to include in the definition of the term “entity-affiliated party” those persons, shareholders, affiliates, consultants, or joint venture partners of a regulated entity; independent contractors; and not-for profit corporations. FHFA does intend to include such persons in conformance with section 1379E.

With respect to entity-affiliated parties who are independent contractors, one commenter questioned whether FHFA intended that the protection from liability apply only to those independent contractors who knowingly or recklessly participate in any violation of any law or regulation, any breach of fiduciary duty or any unsafe or unsound practice and such violation, breach or practice caused or is likely to cause more than a minimal financial loss to or have a significant adverse effect on the regulated entity.

As published in the proposed § 1233.5, the provision protects the

regulated entity and an entity-affiliated party from liability for filing a report of fraud or possible fraud to FHFA, in good faith, or for any failure to provide notice of such report to the person who is the subject of such report or any other persons identified in the report.

Whether an independent contractor participates in a wrong-doing is unrelated to fraud reporting and should not affect the protection from liability afforded by section 1379E(b), as implemented by § 1233.5. Consequently, FHFA has determined to delete from the definition of the term “entity-affiliated party” the language defining an independent contractor in terms of knowingly or recklessly participating in wrong-doing.

**Fraud.** Several commenters recommended adding the element of “intent” to the definition of the term “fraud” in § 1233.2 because the element of intent is included in Federal criminal statutes. Although FHFA has determined not to add the element of intent, the definition of the term “fraud” is clarified in the final regulation by adding the phrase “cannot be corrected” with respect to misstatements, misrepresentations, or omissions. As several commenters remarked, where there are misstatements or omissions that the regulated entity, after due diligence, has concluded were unintentional and can be corrected, it should do so without being required to make a report.

In addition, the term “material” is deleted in the final regulation’s definition of the term “fraud” because the concept of materiality has been captured by the fraudulent or possibly fraudulent information the regulated entity “relied upon” to decide to purchase or sell a loan or financial instrument. In other words, if a decision to purchase or sell would have been different had the regulated entity possessed accurate information at the time of the transaction, then the regulated entity is required to file a report.

**Financial instrument.** The term “financial instrument” is added to the final § 1233.2 to mean any legally enforceable agreement, certificate, or other writing, in hardcopy or electronic form, having monetary value. The term includes, but is not limited to, any agreement, certificate, or other writing evidencing an asset pledged as collateral to a Bank by a member to secure an advance by the Bank to that member. As discussed above, FHFA has added this definition to clarify that the reporting requirements apply to all programs and products of the regulated entities.

**Purchased or sold or relating to the purchase or sale.** A definition of the phrase “purchased or sold or relating to the purchase or sale” is added to the final § 1233.2 to mean any transaction involving a financial instrument. The term includes, but is not limited to, any purchase, sale, other acquisition, or creation of a financial instrument by the member of a Bank to be pledged as collateral to the Bank to secure an advance by the Bank to that member, the pledging by a member to a Bank of such financial instrument to secure such an advance, the making of a grant by a Bank under its affordable housing program or community investment program, and the effecting of a wire transfer or other form of electronic payments transaction by the Bank. As discussed above, FHFA has added the definition of the phrase “purchased or sold or relating to the purchase or sale” to clarify that the reporting requirements apply to all programs and products of the regulated entities. Specific requirements for different programs and products will be outlined in future FHFA guidance.

#### Section 1233.3 Reporting

Proposed § 1233.3 would have required reports to the Director for any fraud or possible fraud occurring in connection with a loan, a series of loans, or other financial instruments that the regulated entity has purchased or sold, and to do so promptly after identifying such fraud or possible fraud or is notified about such fraud or possible fraud by law enforcement or other government authority.

Several commenters requested that reports be made to an examiner-in-charge rather than the Director. FHFA notes that the term “Director” is defined in § 1233.2 as the Director of FHFA or his or her designee. Regulated entities will be notified either from FHFA staff or through guidance where to submit reports.

One commenter suggested that fraud or possible fraud involving an individual loan in an MBS should not be covered by the reporting requirements of this regulation. The commenter reasoned that if MBS are included, a regulated entity would not be able to rely on the representations and warranties of the MBS issuer regarding the underlying loans, and thereby eliminate a primary benefit of MBS ownership. As discussed above, it is the intention of FHFA to include all programs and products in the requirements of this regulation, including MBS. FHFA will issue guidance on due diligence for discovering fraud. FHFA expects that

the number of reports for each program or product will differ.

The commenter also suggested modifying § 1233.3(a) to parallel the language in section 1379E. FHFA agrees and has modified proposed § 1233.3(a) in the final regulation. The revised language includes the phrase “upon discovery” and replaces “relating to any fraud or possible fraud occurring in connection with a loan, a series of loans or other financial instruments” with “fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument.” The use of the word “discovery” implies discovery from any source including, but not limited to, internal processes, law enforcement, government authorities, or other third parties such as member institutions or financial counterparties.

Another commenter suggested that the obligation to report fraud in an individual loan within an MBS already resides with the financial institution originating the mortgage to file a suspicious activity report (SAR) with the Financial Crimes Enforcement Network. This commenter suggested that the final regulation should clarify that the regulation does not duplicate these requirements. FHFA recognizes that financial institutions regulated by other Federal authorities are responsible for filing SARs. Nevertheless, because neither the regulated entity nor FHFA is able to confirm whether a financial institution has filed a SAR, the regulated entity must report to FHFA.

A few commenters requested that the final regulation include the specific forms and formats to be used to satisfy the reporting requirements. FHFA has considered the comment and determined that it is more appropriate to provide instruction on the form and format of reports in forthcoming FHFA guidance.

#### *Section 1233.4 Internal Controls, Procedures, and Training*

Proposed § 1233.4 would have set forth the procedures for each regulated entity to establish and maintain adequate and efficient internal controls, procedures, and an operational training program to assure an effective system to detect and report fraud or possible fraud in connection with the purchase or sale of a loan or financial instrument.

Several commenters sought clarification on whether third-party review or controls and procedures would constitute fraud discovery controls for the regulated entities. One commenter explained that in the case of the Mortgage Partnership Finance Program, participating Banks engage the

Federal Home Loan Bank of Chicago to perform much of their quality control processes, including fraud discovery. FHFA agrees that in certain circumstances third-party controls may be relied upon. Thus, a participating Bank may rely upon the Federal Home Loan Bank of Chicago to file a report with FHFA in connection with a fraud or suspected fraud associated with the Mortgage Partnership Finance Program. To the extent that FHFA does not have examination powers over the third party, the regulated entity remains responsible for complying with the due diligence requirements of the regulation and guidance. In the final § 1233.4, FHFA has replaced the word “detect” with “discover” to conform with the language of section 1379E(a), inserted “policies” in the list of requirements and made other minor grammatical changes to the language of proposed § 1233.4.

#### *Section 1233.5 Protection From Liability for Reports*

The only comments received on proposed § 1233.5 related to the definition of the term “entity-affiliated party.” These comments are addressed above under § 1233.2.

#### *Section 1233.6 Supervisory Action*

Proposed § 1233.6 would have provided that failure by a regulated entity to comply with the regulation may subject the regulated entity or the board members, officers, or employees to supervisory action by FHFA, including but not limited to, cease-and-desist proceedings and civil money penalties.

One commenter recommended removal of the reference to enforcement actions against a regulated entity’s board members, officers, and employees in the absence of willful and wrongful conduct directly resulting in the regulated entity’s determination not to comply with the requirements of the regulation. FHFA has considered the comment and has determined not to make the change.

#### *Effective Date*

One commenter requested a period prior to the final regulation’s effective date sufficient for the Banks to implement the necessary systems, policy changes, and related controls to cover private-label MBS and requested that the requirements be applied only on a prospective basis and not to mortgage assets on a Bank’s balance sheet prior to the effective date of the final regulation. FHFA recognizes the new requirements established by this regulation will take time to implement. The effective date of the final regulation will be 30 days from the date it is

published in the **Federal Register**. FHFA guidance will provide for a start-up phase for specific programs and products.

#### *Differences Between the Banks and the Enterprises*

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)) requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks’ cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability whenever promulgating regulations that affect the Banks. In preparing the final regulation, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. In particular, the nature of the controls, policies, procedures and operational training and the extent of the regulatory requirements will be recognized in any guidance. For example, collateral securing advances may require different policies and procedures as opposed to purchased mortgages. Although the respective businesses in which the Banks and the Enterprises are engaged differ, they all, nevertheless, purchase and sell a variety of financial instruments exposing them to the risk of fraud. The Director believes that none of the unique factors relating to the Banks warrants establishing different treatment under the final regulation. However, detailed guidance will be issued to address specific business or operational differences with respect to the regulated entities.

### **III. Regulatory Impact**

#### *Paperwork Reduction Act*

The final regulation pertains to the regulated entities and does not contain any information collection requirement that requires the approval of the Office of Management and Budget 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 will not have a significant economic

impact on a substantial number of small entities. 5 U.S.C. 605(b). In this case, the final regulation applies only to the regulated entities, none of which are small entities for purposes of this requirement. Accordingly, FHFA hereby certifies that the final regulation is not likely to have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act.

#### List of Subjects

##### 12 CFR Part 1233

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Mortgages, Reporting and recordkeeping requirements.

##### 12 CFR Part 1731

Administrative practice and procedure, Government-sponsored enterprises.

#### Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4513, 4514, 4526, and 4642, the Federal Housing Finance Agency amends chapters XII and XVII of Title 12, Code of Federal Regulations, as follows:

#### CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

##### Subchapter B—Entity Regulations

■ 1. Add part 1233 to Subchapter B to read as follows:

#### PART 1233—REPORTING OF FRAUDULENT FINANCIAL INSTRUMENTS

Sec.

- 1233.1 Purpose.
- 1233.2 Definitions.
- 1233.3 Reporting.
- 1233.4 Internal controls, policies, procedures, and training.
- 1233.5 Protection from liability for reports.
- 1233.6 Supervisory action.

**Authority:** 12 U.S.C. 4511, 4513, 4514, 4526, 4642.

##### § 1233.1 Purpose.

The purpose of this part is to implement the Safety and Soundness Act by requiring each regulated entity to report to FHFA upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. In addition, each regulated entity must establish and maintain internal controls, policies, procedures, and operational training to discover such transactions.

##### § 1233.2 Definitions.

The following definitions apply to the terms used in this part:

*Bank or Federal Home Loan Bank* means a Bank established under the Federal Home Loan Bank Act; the term “Federal Home Loan Banks” means, collectively, all the Federal Home Loan Banks.

*Director* means the Director of FHFA or his or her designee.

*Enterprise* means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and any affiliate thereof.

*Entity-affiliated party* means—

(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;

(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant);

(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(5) The Office of Finance.

*Financial instrument* means any legally enforceable agreement, certificate, or other writing, in hardcopy or electronic form, having monetary value including, but not limited to, any agreement, certificate, or other writing evidencing an asset pledged as collateral to a Bank by a member to secure an advance by the Bank to that member.

*Fraud* means a misstatement, misrepresentation, or omission that cannot be corrected and that was relied upon by a regulated entity to purchase or sell a loan or financial instrument.

*Possible fraud* means that a regulated entity has a reasonable belief, based upon a review of information available to the regulated entity, that fraud may be occurring or has occurred.

*Purchased or sold or relating to the purchase or sale* means any transaction involving a financial instrument including, but not limited to, any purchase, sale, other acquisition, or creation of a financial instrument by the member of a Bank to be pledged as collateral to the Bank to secure an

advance by the Bank to that member, the pledging by a member to a Bank of such financial instrument to secure such an advance, the making of a grant by a Bank under its affordable housing program or community investment program, and the effecting of a wire transfer or other form of electronic payments transaction by the Bank.

*Regulated entity* means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and any Federal Home Loan Bank; the term “regulated entities” means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

*Safety and Soundness Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008).

##### § 1233.3 Reporting.

(a) *Timeframe for reporting.* (1) A regulated entity shall submit to the Director a timely written report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument.

(2) In addition to submitting a report in accordance with paragraph (a)(1) of this section, in any situation that would have a significant impact on the regulated entity, the regulated entity shall immediately report any fraud or possible fraud to the Director by telephone or electronic communication.

(b) *Format for reporting.* (1) The report shall be in such format and shall be filed in accordance with such procedures that the Director may prescribe.

(2) The Director may require a regulated entity to provide such additional or continuing information relating to such fraud or possible fraud that the Director deems appropriate.

(3) A regulated entity may satisfy the reporting requirements of this section by submitting the required information on a form or in another format used by any other regulatory agency, provided it has first obtained the prior written approval of the Director.

(c) *Retention of records.* A regulated entity or entity-affiliated party shall maintain a copy of any report submitted to the Director and the original or

business record equivalent of any supporting documentation for a period of five years from the date of submission.

(d) *Nondisclosure.* (1) A regulated entity or entity-affiliated party may not disclose to any person that it has submitted a report to the Director pursuant to this section, unless it has first obtained the prior written approval of the Director.

(2) The restriction in paragraph (d)(1) of this section does not prohibit a regulated entity from—

(i) Disclosing or reporting such fraud or possible fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or

(ii) Taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the fraud or possible fraud.

(e) *No waiver of privilege.* A regulated entity does not waive any privilege it may possess under any applicable law as a consequence of reporting fraud or possible fraud under this part.

#### § 1233.4 Internal controls, policies, procedures, and training.

(a) *In general.* Each regulated entity shall establish and maintain adequate and efficient internal controls, policies, procedures, and an operational training program to discover and report fraud or possible fraud in connection with the purchase or sale of any loan or financial instrument.

(b) *Examination.* The examination by FHFA of fraud reporting programs of each regulated entity includes an evaluation of the effectiveness of the internal controls, policies, procedures, and operational training program in place to minimize risks from fraud and to report fraud or possible fraud to FHFA in accordance with this regulation.

#### § 1233.5 Protection from liability for reports.

As provided by section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(b)), a regulated entity that, in good faith, submits a report pursuant to this part, and any entity-affiliated party, that, in good faith, submits or requires a person to submit a report pursuant to this part, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report, or for any failure to provide notice of such report

to the person who is the subject of such report, or any other persons identified in the report.

#### § 1233.6 Supervisory action.

Failure by a regulated entity to comply with this part may subject the regulated entity or the board members, officers, or employees thereof to supervisory action by FHFA, including but not limited to, cease-and-desist proceedings and civil money penalties.

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

#### PART 1731—[REMOVED]

##### ■ 2. Remove part 1731.

Dated: January 20, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010-1641 Filed 1-26-10; 8:45 am]

BILLING CODE P

### DEPARTMENT OF COMMERCE

#### Economic Development Administration

#### 13 CFR Parts 301, 302, 305, 307, 308, 313 and 315

[Docket No. 080213181-91417-02]

RIN 0610-AA64

#### Revisions to the EDA Regulations

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** On October 22, 2008, the Economic Development Administration (“EDA”) published an interim final rule to synchronize its Revolving Loan Fund (“RLF”) regulations with significant improvements in the management and oversight of its RLF program, including the issuance of written guidance that provides EDA staff with steps to help better ensure grantee compliance with RLF requirements. Additionally, the interim final rule made changes to certain definitions in the Trade Adjustment Assistance for Firms program regulations provided notice of other substantive and non-substantive revisions made to EDA’s regulations. EDA received a total of two comments on the October 22, 2008 interim final rule. This final rule responds to all substantive comments received during the public comment period and finalizes this rulemaking proceeding.

**DATES:** This final rule is effective as of January 27, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Hina Shaikh, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-4687.

#### SUPPLEMENTARY INFORMATION:

##### Background

EDA published an interim final rule in the *Federal Register* (73 FR 62858) on October 22, 2008, to amend some of EDA’s regulations, namely the Trade Adjustment Assistance for Firms program (“TAA Program”) regulations and the RLF program regulations. The technical revisions to a few of the TAA definitions were made to help better align EDA’s responsibilities in implementing the TAA Program under the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*). We made a number of changes to the RLF regulations in line with our commitment to implement the Office of Inspector General’s (“OIG”) audit recommendations and to improve the administration and effectiveness of the RLF program. The revisions to the RLF regulations correspond to the policy determinations that EDA made in response to the OIG’s audit report titled *Aggressive EDA Leadership and Oversight Needed To Correct Persistent Problems in the RLF Program* (March 2007). EDA staff highlighted these proposed changes at training sessions for all EDA RLF Recipients. Among the major changes discussed and concluded were the switch to a Web-based semi-annual reporting form that will eliminate redundant and calculable fields; the requirement that RLF grantees submit updated RLF Plans at least once every five years; the pegging of the minimum interest rate to commercial interest rates in order to ensure RLF grantees can lend when commercial interest rates are low; and simplification of record retention requirements. EDA also took into consideration the feedback received at these training sessions, and as a result, eliminated the requirement that sequestered funds be kept in a separate bank account, as many Recipients indicated that there was substantial red tape involved in opening a separate account. Other changes were non-substantive in nature and were made for increased clarity.

*Comments Received on October 22, 2008 Interim Final Rule*

The October 22, 2008 interim final rule provided a deadline of December