



**BILLING CODE: 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1230**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1770**

**RIN 2590-AA12**

**Executive Compensation**

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

**ACTION:** Final Rule.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing a final rule that sets forth requirements and processes with respect to compensation provided to executive officers by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, and the Federal Home Loan Bank System's Office of Finance, consistent with the safety and soundness responsibilities of FHFA under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008. This final rule affirms the establishment of 12 CFR part 1230 and removal of 12 CFR part 1770 by the interim final rule that is already in effect.

**DATES:** The final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For additional information see **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Alfred M. Pollard, General Counsel, (202) 649-3050, Alfred.Pollard@fhfa.gov, or Lindsay Simmons, Assistant General Counsel, (202) 649-3066, Lindsay.Simmons@fhfa.gov, (not toll-free numbers), Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FHFA published an interim final rule with request for comments on Executive Compensation on May 14, 2013 (74 FR 28442). The public notice and comment period closed on July 15, 2013. The interim final rule superseded the Office of Federal Housing Enterprise Oversight (OFHEO) Executive Compensation rule, 12 CFR part 1770.<sup>1</sup> This rule finalizes the interim final rule and responds to comments received.

This final rule implements section 1113 of the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654. Section 1113, which amended section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act (Safety and Soundness Act) (12 U.S.C. 4518), requires the Director to prohibit and withhold compensation of executive officers of the Federal National

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<sup>1</sup> FHFA is continuing its work to merge existing regulations of its predecessor agencies (OFHEO and the Federal Housing Finance Board), and will consider the appropriate disposition of an OFHEO corporate governance provision related to compensation of directors, executive officers, and employees (at 12 CFR 1710.13), and the relationship of that provision to this final rule, in conjunction with that project.

Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities).

FHFA issues this final rule also to continue the requirement under the charter acts of the Enterprises that the Director approve any agreements or contracts of executive officers that provide compensation in connection with termination of employment.<sup>2</sup> No similar prior approval requirement for the Director over termination benefits for executive officers of the Banks is contained in the Federal Home Loan Bank Act or the Safety and Soundness Act, but the total payment or value derived from termination benefits is included in FHFA's review of compensation provided by the Banks to their executive officers, in order to determine whether the overall compensation is reasonable and comparable. This is because FHFA considers the term "compensation" to include benefits to an executive officer that are derived from post-employment benefit plans or programs and other compensatory benefit arrangements containing termination benefits, which affect the executive officer individually or as part of a group. As a result, FHFA reviews the value of benefits provided under such plans, programs, and arrangements on an ongoing basis in exercising its compensation review authority. FHFA aggregates the benefits provided under such plans, programs, and arrangements with all other payments of money or any other thing of current or potential value to determine whether an officer's overall compensation is reasonable and comparable.<sup>3</sup> FHFA may also determine that a particular element of compensation is not reasonable or comparable. For example,

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<sup>2</sup> See section 309(d)(3)(B) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(3)(B)) and section 303(h)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(h)(2)).

<sup>3</sup> See 74 FR at 26990 (June 5, 2009).

incentive compensation that provides incentives for unsound risk management could be prohibited on that basis.

This final rule, like the interim final rule, reflects the enactment of the Stop Trading on Congressional Knowledge Act (the “STOCK Act”), which followed FHFA’s issuance of the proposed rule.<sup>4</sup> Section 16 of the STOCK Act prohibits senior executives of any Enterprise in conservatorship from receiving bonuses during any period of conservatorship on or after the date of enactment. Section 1230.3(a) in the interim final rule and in this final rule includes this statutory prohibition. On March 9, 2012, FHFA announced new executive compensation programs for the Enterprises, in its capacity as conservator.<sup>5</sup> These programs eliminate bonuses for Enterprise senior executives (and other executives) and thus comply with Section 16 of the STOCK Act.

Additionally, FHFA is adopting this final rule to ensure that the regulated entities and the Office of Finance (OF) comply with processes used by FHFA in its oversight of executive compensation. The processes require the submission of relevant information by the regulated entities and OF on a timely basis, in a format deemed appropriate by FHFA, to enable FHFA to efficiently carry out its executive compensation functions. For reasons noted above, as with the Enterprises, information required to be submitted to FHFA for its review and consideration by the Banks includes information relating to compensation for services during employment and to termination benefits for their executive officers.

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<sup>4</sup> See Public Law No. 112-105, 126 Stat. 291 (April 4, 2012) (codified at 12 U.S.C. 4518a).

<sup>5</sup> See News Release dated March 9, 2012, at <http://www.fhfa.gov/webfiles/23438/ExecComp3912F.pdf>.

FHFA had adopted the interim final rule to provide an opportunity for additional comment in view of certain revisions to the proposed rule. Further details about comments received and FHFA's responses can be found below.

FHFA has conducted a separate rulemaking regarding golden parachute payments. Section 1114 of HERA further amended section 1318 of the Safety and Soundness Act (12 U.S.C. 4518) to authorize the Director to prohibit or limit golden parachute payments and indemnification payments by the Enterprises and the Banks to entity-affiliated parties. Pursuant to this authority, FHFA adopted a final rule on golden parachute payments in 2009,<sup>6</sup> setting forth factors to be considered by the Director of FHFA when exercising authority to limit golden parachute payments that are paid to entity-affiliated parties of a regulated entity or OF. Subsequently, FHFA proposed amendments to the final golden parachute payments rule to address in more detail prohibited and permissible golden parachute payments.<sup>7</sup> Today, FHFA also publishes in this issue of the Federal Register a final amendment of the rule on golden parachute payments.

FHFA recently adopted a rule setting forth definitions of terms commonly used in its regulations, and has removed duplicative definitions in this final rule.<sup>8</sup>

## **II. Comments on the Interim Final Rule**

FHFA received comments from one member of the public, and from the twelve Federal Home Loan Banks and the Office of Finance. FHFA considered all of the comments submitted, and explains its responses below.

### Rule's effect on compensation

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<sup>6</sup> Golden Parachute Payments, 74 FR 5101 (January 29, 2009), codified at 12 CFR part 1231.

<sup>7</sup> Golden Parachute and Indemnification Payments Proposed Rule, 74 FR 30975 (June 29, 2009).

<sup>8</sup> See 12 CFR 1201.1.

The Banks made two comments regarding FHFA's review of compensation that are similar to or continue comments they had made previously in response to the proposed rule. The first is the Banks' allegation that the rule in effect prescribes a level or range of executive compensation. The second is that FHFA's review "in whole or in part" should instead be review "taken as a whole."

Congress provided in 12 U.S.C. 4518(d) that FHFA is not to prescribe or set specific levels or ranges of compensation. Congress required, however, that FHFA determine whether compensation is reasonable and comparable with compensation for employment in other similar businesses involving similar duties and responsibilities. Accordingly, FHFA has defined the terms "reasonable" and "comparable" and has implemented the Congressional mandate in § 1230.3(a) as follows: "No regulated entity or the Office of Finance shall pay compensation to an executive officer that is not reasonable and comparable with compensation paid by such similar businesses involving similar duties and responsibilities."

The Banks argued that, despite changes FHFA made in the interim final rule in response to comments the Banks made on the proposed rule, the interim final rule allows FHFA to prescribe or set a specific level or range of compensation, contrary to the statute. The Banks argue that three provisions in combination create this result. First, as stated above, FHFA implemented the Congressional mandate in § 1230.3(a) of the rule to state that regulated entities and the OF may not pay compensation that is not reasonable and comparable according to the statute. Second, the interim final rule defines "comparable" as "compensation that, taking in whole or in part, does not materially exceed compensation paid at institutions of similar size and function for similar duties

and responsibilities.” Finally, in its discussion of the proposed rule and of the interim final rule, FHFA identified the Farm Credit Banks and Federal Reserve Banks as examples that may appropriately be included as points of reference in assessing reasonableness and comparability of compensation at the Federal Home Loan Banks. The Banks assert that these provisions in effect (i) prohibit the Banks from paying compensation that is not “reasonable” and “comparable” in a manner that prescribes or sets a specific level of range of compensation, (ii) impose a presumptive cap of “not materially exceed[ing]” compensation at similar institutions, and (iii) designate particular comparator institutions that will determine compliance with the rule.

FHFA has responded to the Banks’ stated concerns on this subject in this rulemaking, including making changes to the rule in response to the Banks’ previous comments, and must now reject this final comment as being no more persuasive than the previous comments, to which FHFA has already adequately responded.<sup>9</sup> The first of the three provisions the Banks’ find objectionable, in § 1230.3(a), is a reasonable implementation of the Congressional mandate in the statute and in no way authorizes FHFA to set compensation or a range of compensation.

FHFA defined the term “comparable” in the way it deems to be closest to Congressional intent, true to the meaning of the word in plain English, and supported by market usage of the term. Comparison with similar positions at similar institutions is a common practice for setting compensation. It appears clear that a statutory requirement of comparability would need to operate as a check on compensation that materially exceeds compensation for comparable duties and responsibilities at comparable institutions. Even so, FHFA avoided translating this requirement into specific mandates

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<sup>9</sup> 78 FR 28442, 28444-45 (May 14, 2013).

to create a certain peer group of a certain size, or even use of a certain process to create the group of comparators, which could have limited the flexibility of the Banks in implementing the mandate. FHFA reviews comparability while also respecting the Banks' processes for setting compensation. This review results in no specific level of compensation, nor a range, communicated from FHFA to the regulated entities or OF, in practice or in effect.

FHFA continues to believe that the Farm Credit Banks and the Federal Reserve Banks are relevant points of reference in assessing the reasonableness and comparability of Bank compensation, because they have certain points in common with the Federal Home Loan Banks: they are government-sponsored financial institutions; they have some measure of government backing and therefore a potentially different risk profile than non-government-sponsored institutions; and they do not issue publicly traded stock that can be used as an element of long-term compensation and therefore must structure their compensation differently from publicly traded companies. For these reasons it would be wrong to ignore the Farm Credit Banks and the Federal Reserve Banks. While the Banks' comment letters have correctly pointed out differences between them and the Farm Credit Banks and the Federal Reserve Banks, there are also key differences between the Federal Home Loan Banks and the commercial banks and similar institutions that the Banks have identified as their comparators. The fact is that there are no institutions that are exactly comparable to the Federal Home Loan Banks.

FHFA had included these points in its previous response<sup>10</sup> to the Banks' previous comments and the Banks did not in their most recent comment letter to the interim final rule provide any additional responsive arguments about the appropriateness of

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<sup>10</sup> 78 FR 28442, 28444-45 (May 14, 2013).

comparability with the Farm Credit Banks and the Federal Reserve Banks. FHFA maintains that suggesting these entities be included as points of reference among a group of comparators is fully responsive to its Congressional mandate to determine whether compensation is comparable to that of similar businesses with similar duties and responsibilities, and that doing so does not result in setting a specific level or range of compensation.

The unique member-controlled cooperative structure of the Federal Home Loan Bank system was in place as of the time that Congress created the statute that mandates FHFA's review for reasonableness and comparability of compensation, and therefore cannot be adduced as a basis for FHFA to abandon its role to review as the statute intended, including for comparability with similar institutions, despite the unique structure in place at the Banks.

FHFA received an additional comment from the Banks, noting that FHFA had rejected the Banks' previous comment that FHFA's review of executive compensation should be based on compensation that is "taken as a whole" rather than "in whole or in part." The Banks had stated their belief that if an executive's compensation package taken as a whole is reasonable and comparable to compensation at similar institutions for similar duties, FHFA should not be permitted to reject a discrete element of an executive's compensation as excessive. They have further requested in response to the interim final rule that FHFA recognize that the Banks are more restricted than other large financial institutions in methods that they can use to compensate their executives. For example, the Banks are unable to offer stock-related executive compensation because

they do not have publicly traded stock. The Banks requested that FHFA take these distinguishing factors into consideration.

FHFA responded to that earlier comment that in its ongoing oversight of an executive's overall compensation, FHFA reviews all components that compose the broadly defined term "compensation."<sup>11</sup> If any component's value is determined to be an outlier, it may still be acceptable given the compensation taken as a whole. On the other hand, it may also be deemed excessive by itself if it creates questionable incentives, or in other ways draws undue negative attention to itself. FHFA will advise the entity if it finds the aggregate compensation package to be excessive. FHFA may specifically note that a particular component appears to be the source of the problem and should be reassessed by the entity in order to align the total package with the reasonable and comparable standard. For these reasons, FHFA has determined to retain the language, which is currently effective in the interim final rule, in this final rule as well. FHFA assures the Banks that it does take into account the particular circumstances of the Banks in reviewing executive compensation. FHFA is well aware that the Banks do not have publicly traded stock and pay compensation in cash.

FHFA recognizes that executive compensation oversight mandated by HERA has resulted in a new area of regulatory compliance for the Banks. For that reason, in addition to guidance, FHFA staff will continue to work directly with the relevant staff, committees, and boards of the Banks to ensure that FHFA's review process is well understood. FHFA guidance and dialogue between staffs will, among other things, address concerns raised by the Banks regarding how the provisions of the rule will operate under specific circumstances.

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<sup>11</sup> 78 FR at 28445.

Status as an executive officer

The Banks requested that the term “executive officer” apply only to those individuals who qualify as executive officers as of the time of a required notice regarding such individual’s compensation. The Supplementary Information to the interim final rule states that “[a]n executive officer for purposes of this regulation would cover officers who were NEOs at the Bank’s last filing, who would be NEOs if the filing occurred today, and those expected to be NEOs in the future based on current title, duties, or pay. (Consequently, the total number of NEOs at any time may be more than five.)”

In order to address the Banks’ request, FHFA has determined to narrow its interpretation described above in the Supplementary Information to the interim final rule. FHFA will apply the definition more narrowly, in a manner which is intended to address the concern expressed by the Banks, and which is reflective of the plain meaning of the regulatory text. With respect to the Banks, the definition of “executive officer” adopts the language of the SEC’s Regulation S-K, 17 CFR 229.402(a)(3), and therefore covers a Bank’s most highly compensated officers (generally referred to as the “top 5”) who are designated under SEC disclosure requirements as “Named Executive Officers” (NEOs).

It is FHFA’s intent to provide clarity and avoid undue burden on the Banks by following the definition and practice of the SEC for identifying NEOs in its definition for “executive officer.” However, this final rule includes requirements that apply to “executive officers” throughout the year, and not just at the time of securities filings. Therefore, for purposes of clarification, and in response to the request of the Banks, FHFA is now narrowing its interpretation that was previously provided in the

Supplementary Information to the interim final rule as to how the definition of executive officer applies.

The definition of “executive officer” applies to a person who qualifies as an “executive officer” as of the time of a required notice under § 1230.3(d)(1)-(4). In effect, this means that the “top 5” determined for purposes of securities filings<sup>12</sup> will remain the “top 5” for purposes of this regulation until either 1) one of the “top 5” individuals vacates his or her position, or 2) the next “top 5” are identified the following year.

In the case that one of the “top 5” vacates his or her position, this regulation is intended to apply in the following manner. If the position of president or chief financial officer is vacated, the new president or chief financial officer will become one of the “top 5” immediately when the change is effective.<sup>13</sup> If a current employee is promoted with an increase in compensation to fill the role vacated by one of the “top 5” or a new hire is intended to fill the role vacated by one of the “top 5”—and it is reasonably foreseeable that if the individual remains in the role that such individual will become a “top 5” employee under the SEC rules—then the individual should be treated as an executive officer for purposes of this final rule upon the promotion or hire becoming effective.

#### Compensation Actions Requiring Advance Notice

The interim final rule requires prior notification before payment to an executive officer of annual compensation, pay for performance or incentive pay, “or any other element of compensation.” The Banks requested clarification of what “any other element

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<sup>12</sup> Generally, the “top 5” are determined as of a certain date based on current position (for the president or chief financial officer) or the previous 12 months of compensation (for the most highly compensated employees).

<sup>13</sup> Employees who act in the capacity of the vacated position, or who take on similar responsibilities until a successor is named, with no corresponding change in compensation, are not intended to be considered the “top 5” based solely on the temporary performance of those responsibilities.

of compensation” is intended to include, and particularly, whether it includes reimbursements for travel expenses, employee benefit plans such as health benefit plans, and other general plans that executive officers participate in along with other Bank employees.

Compensation is defined broadly to include any item of current or potential value provided in connection with employment, including benefits received under a broad-based benefit plan. This is because FHFA reviews the value of benefits provided under such plans, programs, and arrangements on an ongoing basis in exercising its review authority. FHFA must be aware of the value of benefits provided under such plans, programs, and arrangements in addition to all other payments of money or any other thing of current or potential value to determine whether an officer’s overall “compensation” is reasonable and comparable. With regard to the notice requirement, however, approval of a broad-based benefit plan or policy (such as a travel reimbursement policy) can serve to satisfy the notice requirement for individual payments made under those plans. For purposes of clarity, such blanket approval can apply to the periodic payments of base salary, but is not intended to apply to any payments under incentive plans, any pay for performance, any plans that apply principally to the executive officers as defined in this final rule, or to any payments under individually negotiated agreements.

Moreover, FHFA is responding to the Banks’ comment by replacing the phrase “any other element of compensation” with a more specific list of the elements of compensation to which the notice requirement applies. The revised regulatory text in § 1230.3(d)(3) provides that “[a] regulated entity or the Office of Finance shall not,

without providing the Director at least 30 days' advance written notice, pay, disburse, or transfer to any executive officer, annual compensation (where the annual amount has changed); pay for performance or other incentive pay; any amounts under a severance plan, change-in-control agreement, or other separation agreement; any compensation that would qualify as direct compensation for purposes of securities filings; or any other element of compensation identified by the Director prior to the notice period.” Payments made under broad-based health benefit plans, for example, are not subject to the notice requirement. This change serves to narrow the scope of the notice requirement as compared to the interim final rule and is therefore within the scope of the interim final rule’s request for comment.<sup>14</sup>

#### Comments regarding additional process

The Banks requested that the rule be amended to include additional procedures. For example, the Banks requested that the rule include procedures for notifying the Bank of any compensation review, provision to the Banks of official explanation of any action FHFA is considering, and procedures for FHFA to receive input from the Banks on such actions. The Banks also reiterated comments they had made on the proposed rule, to which FHFA responded in the Supplementary Information to the interim final rule.

FHFA believes the input of the Banks is important in its decision-making, and also appreciates that any directive it would issue to a regulated entity to prohibit or withhold compensation of an executive officer impacts the executive financially. For that reason, any such decision is made only after thorough review and full understanding of the facts on a case-by-case basis, and the application to the facts of its authorities

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<sup>14</sup> This is the only change to the text of the interim final rule that FHFA has made, other than to add “supervisory” to paragraph (1)(iii) of the definition of “reasonable and comparable” to clarify what kind of guidance is referred to, consistent with the discussion at 78 FR 28445.

mandated by Congress. Such thorough review and full understanding of relevant facts occurs with a regulated entity's full cooperation and input. FHFA believes incorporating additional procedures in this final rule is unnecessary in light of the extent of communication that will occur with a regulated entity before making a decision such as a determination that executive compensation is excessive or that there had been employee misconduct, and would unduly delay corrective action.

### Grandfathering

The Banks requested grandfathering for compensation agreements in place as of the effective date of the final rule (as opposed to the date of the interim final rule, which was May 14, 2013.) The proposed rule, which was issued prior to the interim final rule and provided opportunity for notice and comment on FHFA's executive compensation rulemaking, was issued June 5, 2009. FHFA believes the period of time from the publication of the proposed rule to the interim final rule, in addition to opportunity for notice and comment, has provided satisfactory notice to the regulated entities of the provisions of the executive compensation rulemaking.

### Recapture of excessive compensation

As described in the Supplementary Information to the interim final rule, FHFA plans to publish for comment a proposal to require the regulated entities to develop and adopt policies to provide for recapture of improvidently or improperly paid compensation in appropriate circumstances.<sup>15</sup>

### **Regulatory Impact**

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<sup>15</sup> See 78 FR at 28446. Such policies would speak more broadly than those contemplated by section 954 of the Dodd-Frank Act, which would address only the recovery of incentive compensation that had been paid based on financial results that are later required to be restated. See Securities Exchange Act of 1934 section 10D, 15 U.S.C. 78j-4.

### Paperwork Reduction Act

The final rule does 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 rule 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 rule's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the interim final rule under the Regulatory Flexibility Act. FHFA certifies that the interim final rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule is applicable only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

### **List of Subjects**

#### 12 CFR Part 1230

Administrative practice and procedure, Compensation, Confidential business information, Government-sponsored enterprises, Reporting and recordkeeping requirements.

#### 12 CFR Part 1770

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements.

## **Authority and Issuance**

Accordingly, for the reasons stated in the Supplementary Information, the Interim Final Rule published at 78 FR 28442 (May 14, 2013) is adopted as a final rule with the following changes:

### **CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

#### **SUBCHAPTER B—ENTITY REGULATIONS**

1. Revise part 1230 to read as follows:

#### **PART 1230—EXECUTIVE COMPENSATION**

Sec.

1230.1 Purpose.

1230.2 Definitions.

1230.3 Prohibition and withholding of executive compensation.

1230.4 Prior approval of termination agreements of Enterprises.

1230.5 Submission of supporting information.

**Authority:** 12 U.S.C. 1427, 1431(l)(5), 1452(h), 4502(6), 4502(12), 4513, 4514, 4517, 4518, 4518a, 4526, 4631, 4632, 4636, and 1723a(d).

##### **§ 1230.1 Purpose.**

The purpose of this part is to implement requirements relating to the supervisory authority of FHFA under the Safety and Soundness Act with respect to compensation provided by the regulated entities and the Office of Finance to their executive officers. This part also establishes a structured process for submission of relevant information by the regulated entities and the Office of Finance, in order to facilitate and enhance the efficiency of FHFA's oversight of executive compensation.

##### **§ 1230.2 Definitions.**

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

Charter acts mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

Compensation means any payment of money or the provision of any other thing of current or potential value in connection with employment. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer, including, but not limited to, payments and benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post-employment benefit, or other compensatory arrangement.

Enterprise means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) and, except as provided by the Director, any affiliate thereof.

Executive officer means:

(1) With respect to an Enterprise:

(i) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairman, any executive vice president, any senior vice president, any individual in charge of a principal business unit, division, or function, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

(ii) Any other officer as identified by the Director;

(2) With respect to a Bank:

(i) The president, the chief financial officer, and the three other most highly compensated officers; and

(ii) Any other officer as identified by the Director.

(3) With respect to the Office of Finance:

(i) The chief executive officer, chief financial officer, and chief operating officer; and

(ii) Any other officer identified by the Director.

Reasonable and comparable means compensation that is:

(1) Reasonable—compensation, taken in whole or in part, that would be appropriate for the position and based on a review of relevant factors including, but not limited to:

(i) The duties and responsibilities of the position;

(ii) Compensation factors that indicate added or diminished risks, constraints, or aids in carrying out the responsibilities of the position; and

(iii) Performance of the regulated entity, the specific employee, or one of the entity's significant components with respect to achievement of goals, consistency with supervisory guidance and internal rules of the entity, and compliance with applicable law and regulation.

(2) Comparable—compensation that, taken in whole or in part, does not materially exceed compensation paid at institutions of similar size and function for similar duties and responsibilities.

Regulated entity means any Enterprise and any Federal Home Loan Bank.

**§ 1230.3 Prohibition and withholding of executive compensation.**

(a) In general. The Director may review the compensation arrangements for any executive officer of a regulated entity or the Office of Finance at any time, and shall prohibit the regulated entity or the Office of Finance from providing compensation to any such executive officer that the Director determines is not reasonable and comparable with compensation for employment in other similar businesses involving similar duties and responsibilities. No regulated entity or the Office of Finance shall pay compensation to an executive officer that is not reasonable and comparable with compensation paid by such similar businesses involving similar duties and responsibilities. No Enterprise in conservatorship shall pay a bonus to any senior executive during the period of that conservatorship.

(b) Factors to be taken into account. In determining whether compensation provided by a regulated entity or the Office of Finance to an executive officer is not reasonable and comparable, the Director may take into consideration any factors the Director considers relevant, including any wrongdoing on the part of the executive officer, such as any fraudulent act or omission, breach of trust or fiduciary duty, violation of law, rule, regulation, order, or written agreement, and insider abuse with respect to the regulated entity or the Office of Finance.

(c) Prohibition on setting compensation by Director. In carrying out paragraph (a) of this section, the Director may not prescribe or set a specific level or range of compensation.

(d) Advance notice to Director of certain compensation actions. (1) A regulated entity or the Office of Finance shall not, without providing the Director at least 60 days'

advance written notice, enter into any written arrangement that provides incentive awards to any executive officer or officers.

(2) A regulated entity or the Office of Finance shall not, without providing the Director at least 30 days' advance written notice, enter into any written arrangement that:

(i) Provides an executive officer a term of employment for a term of six months or more; or

(ii) In the case of a Bank or the Office of Finance, provides compensation to any executive officer in connection with the termination of employment, or establishes a policy of compensation in connection with the termination of employment.

(3) A regulated entity or the Office of Finance shall not, without providing the Director at least 30 days' advance written notice, pay, disburse, or transfer to any executive officer, annual compensation (where the annual amount has changed); pay for performance or other incentive pay; any amounts under a severance plan, change-in-control agreement, or other separation agreement; any compensation that would qualify as direct compensation for purposes of securities filings; or any other element of compensation identified by the Director prior to the notice period.

(4) Notwithstanding the foregoing review periods, a regulated entity or the Office of Finance shall provide five business days' advance written notice to the Director before committing to pay compensation of any amount or type to an executive officer who is being newly hired.

(5) The Director reserves the right to extend any of the foregoing review periods, and may do so in the Director's discretion, upon notice to the regulated entity or the

Office of Finance. Any such notice shall set forth the number of business or calendar days by which the review period is being extended.

(e) Withholding, escrow, prohibition. During the review period required by paragraph (d) of this section, or any extension thereof, a regulated entity or the Office of Finance shall not execute the compensation action that is under review unless the Director provides written notice of approval or non-objection. During a review under paragraph (a) or (d) of this section, or at any time before an executive compensation action has been taken, the Director may, by written notice, require a regulated entity or the Office of Finance to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account, or may prohibit the action.

**§ 1230.4 Prior approval of termination agreements of Enterprises.**

(a) In general. An Enterprise may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by the Director.

(b) Covered agreements or contracts. An agreement or contract that provides for termination payments to an executive officer of an Enterprise that was entered into before October 28, 1992,<sup>1</sup> is not retroactively subject to approval or disapproval by the Director. However, any renegotiation, amendment, or change to such an agreement or contract shall be considered as entering into an agreement or contract that is subject to approval by the Director.

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<sup>1</sup> This date refers to the date of enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(c) Factors to be taken into account. In making the determination whether to approve or disapprove termination benefits, the Director may consider:

(1) Whether the benefits provided under the agreement or contract are comparable to benefits provided under such agreements or contracts for officers of other public or private entities involved in financial services and housing interests who have comparable duties and responsibilities;

(2) The factors set forth in § 1230.3(b); and

(3) Such other information as deemed appropriate by the Director.

(d) Exception to prior approval. An employment agreement or contract subject to prior approval of the Director under this section may be entered into prior to that approval, provided that such agreement or contract specifically provides notice that termination benefits under the agreement or contract shall not be effective and no payments shall be made under such agreement or contract unless and until approved by the Director. Such notice should make clear that alteration of benefit plans subsequent to FHFA approval under this section, which affect final termination benefits of an executive officer, requires review at the time of the individual's termination from the Enterprise and prior to the payment of any benefits.

(e) Effect of prior approval of an agreement or contract. The Director's approval of an executive officer's termination of employment benefits shall not preclude the Director from making any subsequent determination under this section to prohibit and withhold executive compensation.

(f) Form of approval. The Director's approval pursuant to this section may occur in such form and manner as the Director shall provide through written notice to the regulated entities or the Office of Finance.

**§ 1230.5 Submission of supporting information.**

In support of the reviews and decisions provided for in this part, the Director may issue guidance, orders, or notices on the subject of information submissions by the regulated entities and the Office of Finance.

Melvin L. Watt,  
Director, Federal Housing Finance Agency.

Dated: January 15, 2014.

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