



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

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1202**

**RIN 2590-AA86**

**Freedom of Information Act Implementation**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Interim final rule with request for comments.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing this interim final rule to amend its existing Freedom of Information Act (FOIA) regulation. The amendments incorporate the requirements of the FOIA Improvement Act of 2016 by giving notice of the circumstances under which FHFA may extend the time limit for responding to a FOIA request due to unusual circumstance; notifying a requester of their right to seek dispute resolution services; affording a requester a minimum of 90 days to file an administrative appeal; and clarifying and updating the existing regulation.

**DATES:** The interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. FHFA will accept written comments on the interim final rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit your comments on the interim final rule, identified by “RIN 2590-AA86,” by any of the following methods:

- Agency Website: [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).
- Federal eRulemaking Portal: <http://www.regulations.gov> Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: “Comments/RIN 2590-AA86.”
- Hand Delivery/Courier to: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA86, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219. The package must be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- U.S. Mail Service, United Parcel Service, Federal Express, or other commercial delivery service to: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA86, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219. Please note that all mail sent to FHFA via the U.S. Mail service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time- sensitive correspondence, please plan accordingly.

**FOR FURTHER INFORMATION, CONTACT:** David A. Lee, Chief FOIA Officer, (202) 649-3803, or Stacy J. Easter, FOIA Officer (202) 649-3803, (not toll free numbers), Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor,

Washington, DC 20219, or FOIA@fhfa.gov. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **I. Comments**

FHFA is amending its FOIA regulation at 12 CFR part 1202 to incorporate changes made to the FOIA, 5 U.S.C. 552, by the FOIA Improvement Act of 2016, Public Law 114-185, 130 Stat. 538 (June 30, 2016) (Act). The primary changes to the FOIA made by the Act include codifying the foreseeable harm standard when making a determination whether to release agency records under Exemption 5; notifying requesters of the availability of dispute resolutions services at various times throughout the FOIA process; providing a minimum of 90 days for requesters to file an administrative appeal; incorporating the new statutory restrictions on charging fees in certain circumstances, and reflecting recent developments in the case law.

FHFA invites comments on all aspects of the interim final rule and will take all relevant comments into consideration before issuing the final regulation. All submissions received must include the agency name or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change on the FHFA Internet Web site, <http://www.fhfa.gov>, and will include any personal information provided, such as name, address (mailing and email), and telephone numbers. In addition, copies of all comments received will be available for public inspection on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor,

Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

## **II. Effective Date and Request for Comments**

FHFA has concluded that good cause exists, under 5 U.S.C. 553(b)(B) and (d)(3), to waive the notice-and-comment and delayed effective date requirements of the Administrative Procedure Act and to proceed with this interim final rule. The amendments to part 1202 primarily address how FHFA will implement the changes made under the Act, make clarifying and general updates to the existing regulation, and add two appendices indicating where to send FOIA requests and appeals to FHFA and FHFA Office of Inspector General, but do not fundamentally alter or change the regulation's nature or scope. Further, in light of the significant need for immediate guidance regarding the changes made under the Act, FHFA has determined that notice-and-comment rulemaking is impracticable and contrary to public policy.

Nevertheless, FHFA is providing the public with a 60-day period following publication of the interim final rule to submit comments. Any comments received will be considered prior to issuing a final regulation.

## **III. 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 (Safety and Soundness Act) (12 U.S.C. 4501 et seq.) and the Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) to establish FHFA as an

independent agency of the Federal Government to ensure that the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively, the regulated entities) are capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; operate in a safe and sound manner; comply with the Safety and Soundness Act and all rules, regulations, guidelines and orders issued under the Safety and Soundness Act, and the regulated entities' respective authorizing statutes; carry out their missions through activities consistent with the aforementioned authorities; and the activities and operations of the regulated entities are consistent with the public interest.

#### B. Issuance of FOIA Regulation

In 2011, FHFA issued a final FOIA regulation at 12 CFR part 1202 that provided the procedures and guidelines under which FHFA would implement the FOIA, and added provisions to include its newly created component, the Office of Inspector General (FHFA-OIG). This interim final rule amends the existing FOIA regulation at part 1202 to implement the changes made by the Act, remove individual component procedures from the body of the regulation adding them to the newly created appendices, as well as to make clarifying technical amendments.

#### **IV. Analysis of Sections Affected by the Act**

##### Section 1202.2 What do the terms in this regulation mean?

This section is amended to include new and revised terms. It is also amended to conform to recent decisions of the D.C. Circuit Court of Appeals addressing two FOIA Fee categories: “educational institution” and “representative of the news

media.” See *Cause of Action v. FTC*, 799 F.3d 1108 (D.C. Cir. 2015; and *Sack v. DOD*, 823 F.3d 687 (D.C. Cir. 2016). In *Cause of Action*, 799 F.3d at 1125, the court held that a representative of the news media need not work for an entity that is “organized and operated” to publish or broadcast news. Therefore, the definition of “representative of the news media” is amended to remove the “organized and operated” requirement. The definition of “educational institution” is amended to reflect the holding in *Sack*, 823 F.3d at 688, which held that students who make FOIA requests in furtherance of their coursework or other school-sponsored activities may qualify under this requester category. The amended definition now states that a requester under this category need only to show that the request is made in connection with his or her role at the educational institution.

#### Section 1202.3 What information can I obtain through the FOIA?

Paragraph (b) is amended to reflect the changes made to the FOIA by the Act, regarding proactive disclosures of records by making them available for public inspection and copying in FHFA’s electronic reading room.

#### Section 1202.4 What information is exempt from disclosure?

Paragraph (a) is amended to reflect the changes made to the FOIA by the Act regarding adding the foreseeable harm standard to the statute. This amendment informs the public how FHFA will use the foreseeable harm standard when determining whether or not to disclose requested information.

#### Section 1202.5 How do I request information from FHFA under the FOIA?

Paragraph (a) is amended to reflect the addition of two appendices with information on where to file FOIA requests and appeals for each FHFA component (FHFA-Headquarters and FHFA-OIG).

Section 1202.7 How will FHFA respond to my FOIA request?

Paragraph (b) is amended to include a standard for how FHFA will determine the cut-off date for FOIA searches. Also, as required by the Act, paragraph (g)(2) is amended to make available FHFA's FOIA Public Liaison whenever a request is placed in the complex track. Lastly, paragraph (g)(3) is amended to add an explanation on how, why and when FHFA will aggregate a request.

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

As required by the Act, paragraph (b) is amended to extend the time to file an administrative appeal to 90 days after an adverse determination. Paragraph (g) is also amended to include a requirement that FHFA notify requesters of the availability of assistance from FHFA's FOIA Public Liaison and the Office of Government Information Services when providing requesters with a response to their requests.

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

Paragraph (c) is amended to update FHFA's fee schedule. Specifically, a detailed formula on how FHFA's fee schedule is calculated has been added. Going forward fees will be based on this formula and will be published and updated, as required, on FHFA's website. Also, as required by the Act, paragraph (j), which discusses restrictions on charging fees when the FOIA's time limits are not met, is amended to reflect changes made by the Act. These changes reflect that agencies

may not charge search fees (or duplication fees for representatives of the news media and educational/non-commercial scientific institution requesters) when the agency fails to comply with the FOIA's time limits. The restriction on charging fees is excused and the agency may charge fees as usual when it satisfies one of three exceptions as detailed at 5 U.S.C. 552(a)(4)(A)(vii)(II).

#### Appendices to Part 1202

These appendices are new and have been added to describe each FHFA component. Each appendix provides specific information regarding that component to notify the public where to submit a FOIA request for records held or maintained at each component and where to file an appeal.

### **V. Regulatory Impacts**

#### Paperwork Reduction Act

This interim 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 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)). FHFA has considered the impact of this interim final rule under the

Regulatory Flexibility Act. FHFA certifies that the 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 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.

### **Authority and Issuance**

Accordingly, for the reasons stated in the Preamble, FHFA is revising part 1202 of Chapter XII of title 12 of the Code of Federal Regulations 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 the FOIA?
- 1202.4 What information is exempt from disclosure?
- 1202.5 How do I request information from FHFA under the 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 requested records 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?

Appendix A to Part 1202 – FHFA Headquarters

Appendix B to Part 1202 – FHFA Office of Inspector General

Authority: Pub. L. 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?**

The Federal Housing Finance Agency (FHFA) issued this regulation to comply

with the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(a) The Freedom of Information Act (FOIA) (5 U.S.C. 552), is a Federal law that requires the Federal Government to disclose certain Federal Government records to the public.

(b) This part explains the rules that the FHFA will follow 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 that is contained in a system of records maintained by FHFA, you may do so under the Privacy Act of 1974, as amended (5 U.S.C. 552a). This is considered a first-party or Privacy Act request under the Privacy Act, and you must file your request following FHFA's Privacy Act regulation at part 1204 of this title. If you file a request for information about yourself, FHFA will process your request under both the FOIA and Privacy Act in order to give you the greatest degree of access to any responsive material.

(d) Notwithstanding the FOIA and this part, FHFA may routinely publish or disclose to the public information without following these procedures.

### **§ 1202.2 What do the terms in this part mean?**

Some of the terms you need to understand while reading this regulation are—

Aggregating means combing multiple requests for documents that could reasonably have been the subject of a single request and which occur within a 30-day period, by a single requester or by a group of requesters acting in concert that would

otherwise involve unusual circumstances.

Appeals Officer or FOIA Appeals Officer means a person designated by FHFA who processes appeals of denied FOIA requests for FHFA records.

Chief FOIA Officer means the designated high-level official within FHFA (FHFA-OIG does not have a separate Chief FOIA Officer) who has overall responsibility for the agency's FOIA program and compliance with the FOIA.

Confidential commercial information means records provided to the Federal Government by a submitter that contain material exempt from release under Exemption 4 of the FOIA, 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.

Discretionary release means disclosure of records or information that would otherwise be exempt from disclosure under the FOIA.

Direct costs means the expenses, including contract services and retrieving documents from the National Archives and Records Administration, incurred by FHFA, in searching for, reviewing and/or 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.

Duplication means reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

Employee, for the purposes of this regulation, 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.

Fee Waiver means the waiver or reduction of fees if the requester can demonstrate that certain statutory standards are met.

FHFA means each separate component designated by the agency as a primary organizational unit that is responsible for processing FOIA requests, as specified in Appendices A and B to this part. FHFA has two components: Federal Housing Finance Agency Headquarters (FHFA-HQ) and FHFA Office of Inspector General (FHFA-OIG).

FOIA Officer, FOIA Official and Chief FOIA Officer are persons designated by FHFA to process and respond to requests for FHFA records under the FOIA.

FOIA Public Liaison is a person designated by FHFA who is responsible for assisting requesters with their requests.

Proactive disclosure means records that are required by the FOIA to be made publicly available, as well as additional records identified as being of interest to the public that are appropriate for public disclosure, and for posting and indexing such

records.

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 another 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 operations or activities of FHFA, or because of the value of the information it contains; and

(3) Controls at the time it receives a request under the FOIA.

Regulated entities means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks.

Requester means any person seeking access to FHFA records under the FOIA. A requester falls into one of three categories for the purpose of determining what fees may be charged. The three categories are—

(1) Commercial – A request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. A decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester’s intended use of the information;

(2) Noncommercial – Three distinct subcategories—

(i) Educational institution – Any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall with this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request would qualify as part of this fee category;

(ii) Noncommercial scientific institution – An institution that is not operated on a “commercial” basis, as defined in this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A request in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use; or

(iii) Representative of the news media – Any person or entity that publishes or broadcasts news to the public, actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public; and

(3) Other – All requesters who do not fall within either of the preceding two categories.

Requester Service Centers serve as the primary contacts for a requester when the

requester has questions, is seeking information about how the FOIA works, or to check the status of their request.

Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 1202.8(f) of this part.

Search means the process of looking for and retrieving records or information responsive to a request, whether manually or by electronic means. Search time includes a page-by-page or line-by-line identification of information within a record and the reasonable efforts expended to locate and retrieve information from electronic records.

Submitter means any person or entity providing confidential information to the Federal 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 for, collect, and appropriately examine 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 the FHFA

that have a substantial interest in the determination of a request.

### **§ 1202.3 What information can I obtain through the FOIA?**

(a) General. 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.

(b) Proactive disclosure. FHFA will make available for public inspection and copying in its electronic reading room the following records:

(1) Final opinions or orders made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by FHFA that are not published in the Federal Register;

(3) Administrative staff manuals and instructions to staff that affect a member of the public and are not exempt from disclosure under the FOIA;

(4) Copies of all records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3), that because of the nature of their subject matter, FHFA determines have become or are likely to become the subject of subsequent requests for substantially the same records, or that have been requested 3 or more times; and

(5) A general index of the records referred to in paragraph (b)(4) of this section.

(c) Reading rooms. FHFA maintains an electronic reading room. FHFA will ensure that its reading room is reviewed and updated on an ongoing basis. See the Appendices to this part for location and contact information for FHFA-HQ and FHFA-OIG respective reading rooms.

#### **§ 1202.4 What information is exempt from disclosure?**

(a) General. Unless the Director of FHFA or his or her designee, or any regulation or statute specifically authorizes disclosure, FHFA will not release records if it reasonably foresees that disclosure would harm an interest protected by one or more of the following —

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and in fact is 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. 552a), 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; provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(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; or

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

wells.

(b) Discretion to apply exemptions. Although records or parts of records 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 an 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 disclosable portion of the record 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, Congress or any Congressional committee or subcommittee.

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

(a) Where to send your request. FHFA has a decentralized system for processing FOIA requests, made up of two components. To make a request for FHFA records, the FOIA request must be in writing. A requester must write directly to the FOIA office of

the component that maintains the records being sought. The Appendices to this part contain the respective location and contact information for submitting a FOIA request for each FHFA component.

(b) Provide your name and address. Your request must include your full name, your address and, if different, the address at which the component 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 the FOIA. Your request must have a statement identifying it as being made under the FOIA.

(d) Your FOIA status. Your request should include a statement specifically identifying your status 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 the FOIA.

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

(f) How you want the records produced to you. Your request must state in what form or format you want FHFA to furnish the releasable records, e.g., hardcopy, electronic, etc.

(g) Agreement to pay fees. In your FOIA request you must agree to pay all applicable fees charged under § 1202.11 of this part, 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. The fact that FHFA withholds all responsive documents or does not locate any documents responsive to your request, does not mean that you are not responsible for paying applicable fees. Your FOIA request will not be considered received by FHFA until your fee agreement, in writing, is received.

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

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

If FHFA determines that your request does not reasonably describe the records you seek, is overly broad, unduly burdensome to process, cannot yet be processed for reasons related to fees, or lacks required information, you will be informed in writing why your request cannot be processed. You will be given 15 calendar days to modify your request to meet all requirements. This request for additional information tolls the time period for FHFA to respond to your request under § 1202.7 of this part.

(a) If you respond with all the necessary information, FHFA will process this response as a new request and the time period for FHFA to respond to your request will start from the date the additional information is actually received by FHFA.

(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 your request withdrawn and will notify you that it will not be processed.

#### **§ 1202.7 How will FHFA respond to my FOIA request?**

(a) Authority to grant or deny requests. The FOIA Officer, FOIA Official, and the Chief FOIA Officer are authorized to grant or deny any request for FHFA records.

(b) Designated standard “cut-off” date for searches. In determining which records are responsive to a request, FHFA will include only records in its possession as of the date the FOIA request is received.

(c) Multi-Track request processing. FHFA uses a multi-track system to process FOIA requests. This means that a FOIA request is processed based on its 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 (g) of this section.

(1) Standard Track. FHFA assigns FOIA requests that are routine and require little or no search time, review, or analysis to the Standard Track. FHFA responds to these requests in the order in which they are received and normally responds within 20 days after receipt. If FHFA determines while processing your Standard Track request, that it is more appropriately a Complex Track request, it will be reassigned to the Complex Track and you will be notified as described in paragraph (g) of this section.

(2) Complex Track. (i) FHFA assigns requests that are non-routine to the Complex Track. Complex Track requests are those to which FHFA determines that the request and/or response may—

- (A) Be voluminous;
- (B) Involve two or more FHFA components or units;
- (C) Require consultation with other agencies or entities;
- (D) Require searches of archived documents;

(E) Seek confidential commercial information as described in § 1202.8 of this part;

(F) Require an unusually high level of effort to search for, review and/or duplicate records; or

(G) Cause undue disruption to the day-to-day activities of FHFA in regulating and supervising the regulated entities or in carrying out its statutory responsibilities.

(ii) FHFA will respond to Complex Track requests as soon as reasonably possible, regardless of the date of receipt.

(d) Referrals to other agencies. If you submit a FOIA request that seeks records originating in another Federal Government agency, FHFA will refer your request or a portion of your request, as applicable, to the other agency for response. FHFA will provide you notice of the referral, what portion of the request was referred, and the name of the other agency and relevant contact information.

(e) Responses to FOIA requests. FHFA will respond to your request by granting or denying it in full, or by granting and denying it in part. The response will be in writing. In determining which records are responsive to your request, FHFA will conduct a search for records in its possession as of the date of your request.

(1) Requests that are granted. If FHFA grants your request, 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 are denied, or granted and denied in part. If FHFA denies 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 releasable records, if any, the amount of any fees charged, the reasons for denial, and a notice and description of your right to file an administrative appeal under § 1202.9 of this part.

(f) Format and delivery of disclosed records. If FHFA grants, in whole or in part, your request for disclosure of records under the FOIA, the records may be made available to you in the form or format you requested, if they are readily reproducible in that form or format. The records will be sent to the address you provided by regular U.S. mail or by electronic mail unless alternate arrangements are made by mutual agreement, such as your agreement to pay express or expedited delivery service fees, or to pick up records at FHFA offices.

(g) Extensions of time. (1) In unusual circumstances, FHFA may extend the Standard Track time limit in paragraph (c)(1) of this section for no more than 10 days and notify you of—

- (i) The reason for the extension; and
- (ii) The date on which the determination is expected.

(2) For requests in the Complex Track, FHFA will make available its FOIA Public Liaison or other FOIA contact to assist you in modifying or reformulating your request so that it may be processed on the Standard Track. If the request cannot be modified or reformulated to permit processing on the Standard Track, FHFA will notify you regarding an alternative time period for processing the request.

(3) For the purpose of satisfying unusual circumstances under the FOIA, FHFA may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a

single request that would otherwise involve unusual circumstances. FHFA will not aggregate multiple requests that involve unrelated matters.

**§ 1202.8 If the requested records 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 must use good-faith efforts to designate, by appropriate markings or written request, 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 § 1202.4(a)(4) of this part. Any such designation will expire 10 years after the records are submitted to the Federal Government, unless the submitter requests, and provides reasonable justification for a designation period of longer duration.

(c) Pre-Disclosure 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 § 1202.4(a)(4) of this part; 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 Pre-Disclosure Notification. When FHFA sends a Pre-Disclosure Notification to a submitter, it will contain—

(1) A description 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 10 days or such other time period that FHFA may allow by providing to FHFA a detailed written statement demonstrating all reasons the submitter opposes disclosure.

(e) Exceptions to Pre-Disclosure Notification. FHFA is not required to send a Pre-Disclosure Notification if—

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

(2) The information has been published lawfully or has been made officially 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 submitter's designation, under paragraph (b) of this section, appears on its face to be 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 10 days after the date of the Pre-Disclosure Notification, or such other time period that FHFA may allow, by delivering to FHFA a written 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 carefully consider all grounds and reasons provided by a submitter objecting to disclosure. If FHFA decides to disclose the information over the submitter's objection, the submitter will be provided with a written Notice of Intent to disclose at least 10 days before the date of disclosure.

The written Notice of Intent will contain—

- (1) A statement of the reasons why the information will be disclosed;
- (2) A description of the information to be disclosed; and
- (3) A specific disclosure date.

(h) Notice to requester. FHFA will give a requester whose request encompasses confidential commercial information—

(1) A written notice that the request encompasses confidential commercial information that may be exempt from disclosure under 5 U.S.C. 552(b)(4) and § 1202.4(a)(4) of this part and that the submitter of the information has been given a Pre-Disclosure Notification with the opportunity to comment on the proposed disclosure of the information; and

(2) A written notice that a Notice of Intent to disclose has been provided to the submitter, and that the submitter has 10 days, or such other time period that FHFA may allow, to respond.

(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. FHFA will promptly notify the requester whenever a submitter files suit seeking to prevent disclosure of 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 by writing directly to the appropriate FHFA component specified in the Appendices to this part.

(b) Timing, form, content, and receipt of an appeal. Your written appeal must be postmarked or submitted within 90 calendar days of the date of the decision by FHFA denying, in whole or in part, 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(s). FHFA will not consider an improperly addressed appeal to have been received for the purposes of the 20-day time period of paragraph (d) of this section until it is actually received by the correct FHFA component.

(c) Extensions of time to appeal. If you need more time to file your appeal, you may request, in writing, an extension of time of no more than 10 calendar days in which to file your appeal, but only if your request is made within the original 90-calendar day time period for filing the appeal. Granting such an extension is in the sole discretion of the designated component Appeals Officer.

(d) Final action on appeal. FHFA's determination on your appeal will be in writing, signed by the designated component Appeals Officer, and sent to you 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 may—

(1) Affirm, in whole or in part, the initial denial of the request and may include a brief statement of the reason or reasons for the decision, including each FOIA exemption relied upon;

(2) Reverse, in whole or in part, the denial of a request in whole or in part, and require the request to be processed promptly in accordance with the decision; or

(3) Remand a request to FHFA, as appropriate, for re-processing.

(e) Notice of delayed determinations on appeal. If FHFA cannot send a final determination on your appeal within the 20-day time limit, the designated component Appeals Officer will continue to process the appeal and upon expiration of the time limit, will inform you of the reason(s) for the delay and the date on which a determination may be expected. In this notice of delay, the appropriate FHFA component Appeals Officer may request that you forebear seeking judicial review until a final determination is made.

(f) Judicial review. If the denial of your request for records is upheld in whole or in part, or if a determination on your appeal has not been sent at the end of the 20-day 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). Before seeking review by a court of FHFA's adverse determination, a requester generally must first submit a timely administrative appeal.

(g) Additional resource. To aid the requester, the FOIA Public Liaison is available and will assist in the resolution of any disputes. Also, the National Archives and Records Administration (NARA), Office of Government Information Services

(OGIS) offers non-compulsory, non-binding mediation services to resolve FOIA disputes. If you need information regarding the OGIS and/or the services it offers, please contact OGIS directly at Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; e-mail: [ogis@nara.gov](mailto:ogis@nara.gov); phone: (202)741-5770; toll-free: 1-(877) 684-6448; or facsimile at (202)741-5769. This information is provided as a public service only. By providing this information, FHFA does not commit to refer disputes to OGIS, or to defer to OGIS' mediation decisions in particular cases.

**§ 1202.10 Will FHFA expedite my request or appeal?**

(a) Request for expedited processing. You may request, in writing, expedited processing of an initial request or of an appeal. FHFA may grant expedited processing, and give your request or appeal priority if your request for expedited processing demonstrates a compelling need by establishing one or more of the following—

(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 Federal Government's integrity, affecting public confidence;

or

(5) Humanitarian need.

(b) Certification of compelling need. Your request for expedited processing must

include a statement certifying that the reason(s) you present demonstrate a compelling need are true and correct to the best of your knowledge.

(c) Determination on request. FHFA will notify you within 10 days of receipt of your request whether expedited processing has been granted. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision under § 1202.9 of this part will be acted on expeditiously.

### **§ 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 for document search, review, and duplication.

(2) Educational institution, noncommercial scientific institution, or representative of the news media. If you are not requesting records for commercial use and you are an educational institution or a noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the fees that may be assessed are limited to standard reasonable charges 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 assessed are limited to the costs for document searching in excess of two hours and duplication in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) Fee schedule. FHFA will charge fees for processing requests under the FOIA in accordance with the provisions of this section and OMB guidelines (basic pay plus 16 percent). There are three different groups of grades typically involved in processing FOIA requests: Personnel in grades EL-6 to EL-9; personnel in grades EL-10 to EL-13; and personnel EL-14 and above. FHFA's website, [www.fhfa.gov](http://www.fhfa.gov), will contain current rates for search and review fees for each group. The rates will be updated as salaries change and will be determined by using the formula in this regulation. The formula is the sum of the mid-point of each grade divided by the number of grades in each category divided by 2088 and then multiplied by 1.16.<sup>1</sup> Fees for searches of computerized records are based on the actual cost to FHFA. For requests that require the retrieval of records stored by FHFA at a Federal records center operated by the National Archives and Records Administration, FHFA will charge additional costs in accordance with the Transaction Billing Rate Schedule established by NARA.

(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, you will be notified 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 request will be tolled until you agree to pay, in writing, the anticipated total fee.

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<sup>1</sup> Example of the rate formula is as follows: For 2016, EL-6 to EL-9 is  $[(\$55,769 + \$63,554 + \$71,816 + \$81,152)/4][1/2088 \text{ hours per year}][1.16 \text{ OMB markup factor}] = \$37.82 \text{ per hour}$ .

(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 if—

(1) The fees are likely to exceed \$500.00. FHFA will notify you of the likely cost and obtain from you satisfactory assurance of full payment if you have a history of prompt payment of FOIA fees to FHFA;

(2) 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;

(3) 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; or

(4) 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 31<sup>st</sup> 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 will be assessed at the rate prescribed by 31 U.S.C. 3717 and will 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 FOIA staff to modify or reformulate your request to meet your needs at a lower cost.

(h) Fee waiver requests. You may request a fee waiver in accordance with the FOIA and this regulation. Requests for a waiver of fees should be made at the time you submit your FOIA request. FHFA may grant your fee waiver request if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester. In submitting a fee waiver request, you must address the following six factors—

(1) Whether the subject of the requested records concerns the operations or activities of the Federal Government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) Whether disclosure of the requested information will contribute to public understanding;

(4) Whether the disclosure is likely to contribute significantly to public understanding of Federal Government operations or activities;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is

primarily in the commercial interest of the requester.

(i) Fee Waiver determination. FHFA will notify you within 20 days of receipt of your request whether the fee waiver has been granted. A request for fee waiver that is denied may only be appealed when a final decision has been made on the initial FOIA request.

(j) Restrictions on charging fees. If FHFA fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, FHFA may not charge search fees, or in the instance of requests from requesters described in paragraph (b)(2) of this section, may not charge duplication fees. See 5 U.S.C. 552(a)(4)(A)(viii).

(k) The FOIA Public Liaison or other FOIA contact is available to assist any requester in modifying or reformulating a request to meet the requester's needs at a lower cost.

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

This FOIA regulation does 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 the FOIA. This regulation only provides procedures for requesting records under the FOIA.

#### **Appendix A to Part 1202 – FHFA Headquarters**

1. This Appendix applies to the Federal Housing Finance Agency's Headquarters Office.

2. Reading room. FHFA Headquarters maintains an electronic reading room. The electronic reading room is located at

<http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/Reading-Room.aspx>.

3. Where to send your request. You may make a request for FHFA Headquarters records by writing directly to the FOIA Office through electronic mail, U.S. mail, delivery service, or facsimile. The electronic mail address is: [foia@fhfa.gov](mailto:foia@fhfa.gov). For U.S. mail or delivery service, the mailing address is: FOIA Officer, Federal Housing Finance Agency, 400 Seventh Street, S.W., Eighth Floor, Washington, DC 20219. The facsimile number is: (202) 649-1073. When submitting your request, please mark electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “FOIA Request.” FHFA's “Freedom of Information Act Reference Guide,” which is available on FHFA's Website, provides additional information to assist you in making your request, <http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/FOIA-Reference-Guide.aspx>.

4. Right of appeal. If FHFA Headquarters denied your request in whole or in part, you may appeal the denial by writing directly to the FOIA Appeals Officer through electronic mail, U.S. mail, delivery service, or facsimile. The electronic mail address is: [foia@fhfa.gov](mailto:foia@fhfa.gov). For U.S. mail or delivery service, the mailing address is: FOIA Appeals Officer, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219. The facsimile number is: (202) 649-1073. When submitting your appeal, please mark electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “FOIA Appeal.” FHFA's “Freedom of Information Act Reference Guide,” which is available on FHFA's Web site, provides additional information to assist you in making your appeal, <http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/FOIA-Reference-Guide.aspx>.

## **Appendix B to Part 1202 – FHFA Office of Inspector General**

This Appendix applies to the Federal Housing Finance Agency’s Office of Inspector General (FHFA-OIG).

1. Contact information for FOIA Officer. You may contact the FOIA Officer at (202) 730-0399 or by e-mail at FOIA@fhfaoig.gov. Hearing impaired users may utilize the Federal Relay Service (external link) by dialing 1(800) 877-8339. A Communications Assistant will dial the requested number and relay the conversation between a standard (voice) telephone user and text telephone (TTY).

2. Information about the FHFA-OIG FOIA process. You may find information about the FHFA-OIG FOIA process at <https://www.fhfaoig.gov/FOIA>.

3. Reading room. FHFA-OIG maintains an electronic reading room. The electronic reading room is located at <https://www.fhfaoig.gov/FOIA/ReadingRoom>.

4. Where to send your request. You may make a request for FHFA-OIG records by writing directly to the FOIA Office through electronic mail, U.S. mail, delivery service, or facsimile. The electronic mail address is: FOIA@fhfaoig.gov. For U.S. mail or delivery service, the mailing address is: Federal Housing Finance Agency Office of Inspector General, 400 Seventh Street, S.W., Third Floor, Washington, DC 20219, ATTN: Office of Inspector General – FOIA Officer. The facsimile number is: (202) 318-8602. When submitting your request, please mark electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “FOIA Request.”

5. Right of appeal. If FHFA-OIG denies your request in whole or in part, you may appeal the denial by writing directly to the FOIA Officer through electronic mail,

U.S. mail, delivery service, or facsimile. The electronic mail address is: FOIA@fhfaoig.gov. For U.S. mail or delivery service, the mailing address is: Federal Housing Finance Agency, Office of Inspector General, 400 Seventh Street, S.W., Third Floor, Washington, DC 20219, ATTN: Office of Inspector General – FOIA Officer. The facsimile number is: (202) 318-8602. When submitting your appeal, please mark electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “FOIA Appeal.”

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2017\_\_\_\_\_  
Melvin L. Watt  
Director, Federal Housing Finance Agency

\_\_\_\_ March 7,  
Date

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