



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

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Parts 1239 and 1273**

**RIN 2590-AA90**

**Responsibilities of Boards of Directors, Corporate Practices, and Corporate Governance**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Proposed rule.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to amend its regulation on the Responsibilities of Boards of Directors, Corporate Practices, and Corporate Governance for its regulated entities. The proposed rule would amend the existing regulation pertaining to Federal Home Loan Bank strategic business plans so that it would apply as well to the Enterprises, and would make a number of adjustments and conforming changes to the existing regulation. As amended, the regulation would require that the board of directors of each regulated entity have in effect at all times a strategic business plan that describes how the regulated entity's business activities will achieve its statutory purposes. The proposed rule would retain the provision that requires each regulated entity's board of directors to review the strategic business plan at least annually, re-adopt it at least once every three years, and establish reporting requirements for and monitor implementation of the strategic business plan. The proposed rule would add a new provision regarding current and emerging business risks, repeal two outdated provisions of the existing regulation, and make a conforming change to the Office of Finance Board of Directors regulation.

**DATES:** Written comments on the proposed rule must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AA90, by any of the following methods:

- *Agency Web site:* [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 email to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the FHFA. Please include “Comments/RIN 2590–AA90” in the subject line of the submission.
- *Courier/Hand Delivery:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA90, Federal Housing Finance Agency, 400 Seventh Street, SW, Eighth Floor, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA90, Federal Housing Finance Agency, 400 Seventh Street, SW, Eighth Floor, Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:** Daniel Callis, Principal Risk Analyst, Office of the Chief Accountant, at [Daniel.Callis@fhfa.gov](mailto:Daniel.Callis@fhfa.gov) or (202) 649-3448, or Ming-Yuen Meyer-Fong, Office of General Counsel, at [Ming-Yuen.Meyer-Fong@fhfa.gov](mailto:Ming-Yuen.Meyer-Fong@fhfa.gov) or (202) 649-3078 (these are not toll-free numbers), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **I. Request for Comments**

FHFA invites comments on all aspects of this proposed rule. After considering all comments, FHFA intends to issue a final rule. FHFA will post on the FHFA website at <http://www.fhfa.gov> all public comments it receives without change, including any personal information you provide, such as your name, address, email address, and telephone number. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

### **II. Background and Summary**

FHFA previously consolidated and relocated the regulations of its predecessor agencies, the Federal Housing Finance Board (Finance Board) and the Office of Federal Housing Enterprise Oversight, that pertained to the responsibilities of boards of directors, corporate practices, and corporate governance matters into a new regulation at 12 CFR part 1239. 80 FR 72327 (November 19, 2015). The FHFA regulation is organized such that some parts apply to all of FHFA's regulated entities and other parts, because of differences in their corporate structure or business models, apply only to the Federal Home Loan Banks (Banks), or only to Fannie Mae and Freddie Mac (Enterprises).

The current regulation requires each Bank's board of directors to have in effect at all times a strategic business plan that describes how the business activities of the Bank will achieve the mission of the Bank, consistent with the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1421 *et seq.* The current regulation also requires a Bank's board of directors periodically to review and re-adopt the Bank's strategic business plan, establish management reporting requirements, and monitor implementation of the strategic business plan. 12 CFR 1239.31.

FHFA proposes to adopt a similar requirement for the Enterprises. Strategic planning is an organization's process of defining its direction and making decisions on allocating its resources to pursue this direction. The result of this process is the organization's strategy -- a guiding vision of what the organization intends to accomplish and key initiatives or action plans for achieving the vision. It is necessarily forward-looking, actionable, and measurable, and it should be updated periodically to reflect, among other things, changing risks, business environments, and corporate direction. A strategic plan is adopted by an organization's board of directors and executed by its senior management on behalf of its stakeholders.

The proposed rule would replace the existing Bank-only strategic business plan provision currently at 12 CFR 1239.31 with a new provision, to be located at 12 CFR 1239.14. The new provision would adapt the current Bank-only strategic business plan requirements to cover the Enterprises, and make adjustments and conforming changes as needed to reflect the requirements of the Banks and the Enterprises. The most significant change would be to bring the Enterprises within the scope of the strategic business plan requirement currently required only of the board of directors at each Bank. The proposed rule would also include a new requirement for each regulated entity to identify current and emerging risks in its strategic business plan. Apart from that provision, the proposed rule would not impose any new requirements on the Banks' strategic business plans. The proposed rule would also repeal an existing provision relating to quantitative performance goals for Bank products related to multifamily housing and to community financial institution collateral, and a related existing reporting provision.

### **III. The Proposed Rule**

#### **A. Analysis of the Proposed Rule**

The proposed rule would require the board of directors at each regulated entity to adopt and

have in effect at all times a strategic business plan for the regulated entity. The regulated entity's strategic business plan adopted by the board of directors must meet certain minimum requirements pertaining to operating goals, credit needs and market opportunities, new activities, supporting analyses, and current and emerging risks. As noted above, all of these requirements, except for the current and emerging risks, already apply to the Banks. The proposed rule would also require the board of directors at each regulated entity to review the regulated entity's strategic business plan at least annually, to re-adopt the strategic business plan for the regulated entity at least every three years, to establish management reporting requirements, and to monitor implementation of the strategic business plan, as set forth in proposed § 1239.14(b).

The Enterprises are congressionally chartered entities established to advance certain statutory purposes. These statutory purposes include providing stability in the secondary market for residential mortgages, responding appropriately to the private capital market, providing ongoing assistance (by facilitating liquidity and distribution of investment capital) to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families), and promoting access to mortgage credit throughout the nation. 12 U.S.C. 1716 *et seq.* (Fannie Mae); 12 U.S.C. 1451 note (Freddie Mac). Their public purposes also include other, more-specific statutory or regulatory obligations including, for example, an Enterprise's obligations to meet its affordable housing goals, and its duty to serve specified underserved markets. *See* Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), 12 U.S.C. 4501 *et seq.*

Similarly, the Banks are entities established under federal law to serve a housing finance and community lending mission. 12 U.S.C. 1430 and 1430b. For example, in addition to advances, Bank core mission activities include debt or equity investments that primarily benefit households

having a targeted income level or living in areas targeted for redevelopment, by supporting housing, economic development, community services, permanent jobs, or area revitalization or stabilization. 12 CFR 1265.3(e). Like the Enterprises, the Banks have affordable housing goals, but only to the extent that they purchase mortgages from their members. 12 U.S.C. 1430c.

Paragraph 1239.14(a)(1)(i) of the proposed rule would replace the requirement to enumerate operating goals and objectives with a requirement to articulate measurable operating goals and objectives. The change is intended to clarify that goals and objectives are to be described, rather than simply listed, in a manner to allow the board of directors to monitor and hold management accountable for successful execution of the strategic business plan. A regulated entity's board could articulate measurable goals and objectives by specifying quantitative requirements or qualitative requirements. The proposed rule does not prescribe the specific ways in which operating goals and objectives must be articulated, so long as such operating goals and objectives are articulated in a measurable manner necessary to support a regulated entity's board of director's review and monitoring responsibilities under proposed § 1239.14(b), and to allow the board of directors to evaluate and hold management accountable for successful implementation of the strategic business plan.

Proposed § 1239.14(a)(1)(i) would require each Bank's strategic business plan to articulate measurable operating goals and objectives for each significant business activity and all authorized new business activities, which must include plans for maximizing activities that further the Bank's housing finance and community lending mission. This provision is much the same as the existing regulation, but includes several proposed changes to coordinate with the Enterprise requirement, including the reference to "significant business activity," a proposed change from the existing reference to "major business activity."

The proposed rule would also require a Bank’s strategic business plan to articulate measurable operating goals and objectives for all “authorized new business activities.” FHFA regulations currently provide for agency review and action on a Bank’s “new business activity” before a Bank may commence with the new business activity. 12 CFR part 1272. That regulation authorizes a Bank to commence a new business activity absent affirmative approval if FHFA does not take action within the timeframes established under 12 CFR part 1272. The proposed requirement to articulate operating goals and objectives would not apply to new business activities that are denied, are pending FHFA action, or are not yet submitted to FHFA, but only to those new business activities that have been authorized under the new business activities regulation.

The proposed rule would retain the existing requirement that a Bank’s strategic plan “include plans for maximizing activities that further the Bank’s housing finance and community lending mission, consistent with part 1265 of this chapter.” Retaining this clause would reiterate the priority the Banks should continue to place on their core mission activities to further their housing finance and community lending mission, consistent with 12 CFR part 1265.

For the Enterprises, proposed § 1239.14(a)(1)(ii) would similarly require each Enterprise’s strategic business plan to “articulate measurable operating goals and objectives for each significant existing activity and all authorized new activities.” The Enterprises do not have a core mission activity regulation comparable to that of the Banks, so, a requirement analogous to that for the Banks described above is not included in the Enterprise provisions. However, proposed § 1239.14(a)(1)(ii) would achieve an outcome for the Enterprises similar to that for the Banks under § 1239.14(a)(1)(i). It does so by generally requiring the strategic business plan to describe “how the [Enterprise’s] business activities ... will achieve [its] mission and public

purposes,” consistent with its charter act and the Safety and Soundness Act. It also does so by requiring the Enterprise’s strategic business plan to articulate “measurable operating goals and objectives” in achieving the Enterprise’s statutory purposes. Describing how the Enterprise’s business activities will achieve its mission and public purposes, and articulating measurable goals and objectives for significant existing activities, would help to enable an Enterprise’s board of directors to monitor, review, and hold management accountable for successful execution of the strategic business plan.

Proposed § 1239.14(a)(1)(ii) would reference “authorized new activities” in its “measurable operating goals and objectives” requirement. FHFA regulations currently provide for agency review and action on an Enterprise’s “new activity” before the Enterprise may commence with the new activity. 12 CFR part 1253. The term “authorized new activities” is used because the current regulation for considering new activities authorizes an Enterprise to engage in a new activity absent affirmative approval. This could occur where FHFA does not take action within 15 days from receipt of a complete new activity notice. 12 CFR 1253.3(d). As a result, § 1239.14(a)(1)(ii) requires articulation of measurable operating goals and objectives for all “authorized new activities,” which could include both new activities that were affirmatively approved by FHFA and those authorized by passage of time. Proposed § 1239.14(a)(1)(ii) would not require a strategic business plan to articulate measurable goals and objectives for new activities that are denied, pending FHFA action, or not yet submitted to FHFA.

Proposed § 1239.14(a)(2) would require each regulated entity’s strategic business plan to discuss how the regulated entity will address credit needs and market opportunities identified through ongoing market research and stakeholder consultations. In the case of the Banks, stakeholders would include members, housing associates, and public and private organizations.

In the case of the Enterprises, stakeholders would include mortgage market participants and public and private organizations, including those that advocate for access to credit. The purpose of § 1239.14(a)(2) is similar to that currently in effect for the Banks, that is, to require regulated entity board engagement with market research and stakeholder consultations to identify areas of credit needs and market opportunities to further the regulated entity's public purposes.

Proposed § 1239.14(a)(3) would require a regulated entity's strategic business plan to describe "significant activities in which the regulated entity is planning to be engaged," including any changes to business strategy or approach that the regulated entity is planning to undertake, and discuss how such activities further the regulated entity's public purposes. FHFA considered whether to retain the existing language in 12 CFR 1239.31(a)(4), which requires a regulated entity's strategic business plan to describe any "proposed new business activities or enhancements of existing activities." However, the language of the existing requirement is unclear as to whether activities in various stages of development are covered.

Specifically, the existing regulatory language referring to "proposed new business activities or enhancements of existing activities" in § 1239.31(a)(4) may be ambiguous in that it could be interpreted to include those activities that are in the planning or development process within a Bank, but not yet submitted as a new business activity. Alternatively, it could be interpreted to refer to only those new business activities submitted to and pending approval with FHFA. Rather than referring to proposed new business activities and enhancements of existing activities, FHFA proposes to modify the existing language for the Banks and apply the same requirement to the Enterprises.

Proposed § 1239.14(a)(3) would eliminate the need, in the context of the strategic business plan requirement, to determine whether an activity is a new business activity in the case of a

Bank, or a new activity in the case of an Enterprise, for purposes of the respective regulation, and whether it has been submitted or approved as such. The focus of the requirement would be on significant activities in which the regulated entity is planning to be engaged and how these planned activities would further the regulated entity's public purposes. To the extent the significant activities described would affect the future financial condition or risk profile of the regulated entity, the strategic business plan should address such risks.

For the Banks, proposed § 1239.14(a)(3) would clarify the existing regulatory language in 12 CFR 1239.31(a)(4) for each Bank's strategic business plan to describe any "proposed new business activities or enhancements of existing activities." Instead, the proposed change would require the plan to describe any "significant activities in which the regulated entity is planning to be engaged."

Proposed § 1239.14(a)(4)(i) would continue to require a Bank strategic business plan to be supported by appropriate and timely research and analysis of relevant market developments and member and housing associate demand for Bank products and services. This is the same as the existing requirement for the Banks. In addition, the existing reference to "associate" would be revised to "housing associate."

Similarly, § 1239.14(a)(4)(ii) would require an Enterprise's strategic business plan to be supported by appropriate and timely research and analysis of relevant market developments. This Enterprise requirement is consistent with the existing requirement for the Banks, and does not include the Bank-specific reference to member and housing associate demand for Bank products and services.

Proposed § 1239.14(a)(5) would require a regulated entity's strategic business plan to identify current and emerging risks, including such current and emerging risks associated with

the regulated entity's existing activities or new activities, and discuss how the regulated entity plans to further its public purposes and mission in a safe and sound manner.

Emerging risks are risks that are potentially significant but which may not be fully known or understood, and could be associated with new or existing activities. This requirement would be a new requirement for the Banks.

Proposed § 1239.14(b) would require each regulated entity's board of directors to review the strategic business plan at least annually, re-adopt the plan at least every three years, and to establish reporting requirements and monitor implementation of the strategic business plan. The substance of this provision is identical to that of the existing Bank strategic business plan provision.

#### B. Provisions to be Repealed

The proposed rule would repeal the provision from the existing regulation at 12 CFR 1239.31(a)(3) that requires the Banks to include in their strategic business plans quantitative performance goals for Bank products related to multifamily housing and to community financial institution (CFI) collateral. The Finance Board added this requirement to the strategic business plan regulation shortly after Congress first authorized the Banks to accept CFI collateral. When doing so, the Finance Board explained that it wanted to make clear that providing financing for multifamily lending and for advances secured by the newly authorized CFI collateral is a part of the Banks' mission. In the 17 years that have passed since the Finance Board adopted this requirement, FHFA has monitored the Banks' acceptance of CFI collateral and has determined that this is very much a member-driven practice. There is considerable variation among the Banks as to the extent to which the Banks' members pledge CFI collateral, which FHFA believes is driven by the different types of loans made by the members in different Bank districts. Some

Banks have significant numbers of members that make loans for small farm, small agribusiness, small business, or community development purposes, while other Banks have fewer members engaged in making those types of loans. Moreover, CFI collateral is no longer new, and decisions about what type of collateral to pledge are ultimately made by the individual members, based on their particular business needs. FHFA does not require Banks to set quantitative goals for the other types of collateral that members may pledge. In light of all of those factors, FHFA believes that there is no longer any need for the strategic business plans to address these categories of collateral. The proposed rule would repeal this provision, as well as a separate provision at 12 CFR 1239.31(c) that requires the Banks to report annually on their progress towards meeting those goals.

The proposed rule would also make a conforming change to a reference contained in § 1273.8(d)(2) relating to the Office of Finance board of directors' duty to approve a strategic business plan, to reference the proposed new provision at § 1239.14.

### C. Corporate Governance Requirements and Conservatorship

As FHFA noted when it most recently adopted its corporate governance regulation, the regulation is not intended to address conservatorship matters. 80 FR at 72328. Instead, the corporate governance regulation is intended to address matters of corporate practice and governance at the regulated entities. FHFA, as conservator, currently possesses ultimate authority over all operations of the Enterprises. Pursuant to its conservatorship authority, FHFA has provided for Enterprise boards to exercise the functions of management oversight that exist under applicable law and regulation, including FHFA's corporate governance regulation, while reserving for itself decision making authority to establish conservatorship direction.

Accordingly, under the proposed rule, as part of their corporate governance requirements, the

board of directors at each Enterprise would be required to adopt a strategic business plan. Each Enterprise's strategic business plan should describe, at a minimum, how the business activities of the Enterprise will achieve its public purposes as set forth under its respective statutory charter and the Safety and Soundness Act. Although the Enterprises remain in conservatorship, their boards of directors have been operating under FHFA regulations, including the standards set forth in FHFA's corporate governance regulation at 12 CFR part 1239, that govern board members outside of conservatorship, except as modified by the conservator. Such duties include establishing strategic objectives that incorporate the priorities of the conservator while achieving the Enterprise's statutory purposes in a safe and sound manner.

#### D. Consideration of Differences Between the Banks and the Enterprises

When promulgating regulations that relate to the Banks, section 1313(f) of the Safety and Soundness Act requires FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks': Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. 12 U.S.C. 4513(f). In developing the proposed rule, FHFA has considered these areas of differences between the Banks and the Enterprises, and has determined that the proposed rule is unlikely to adversely affect the Banks in these areas of differences. FHFA is requesting public comment on whether differences related to these factors should result in a revision of the proposed rule as it relates to the Banks.

#### **IV. Paperwork Reduction Act**

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

## **V. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to analyze a regulation's impact on small entities if the regulation is expected to 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 proposed rule and the General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because it applies only to the regulated entities and the Office of Finance, which are not small entities for purposes of the Regulatory Flexibility Act. Therefore, an initial regulatory flexibility analysis is not required.

### **List of Subjects**

#### **12 CFR Part 1239**

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

#### **12 CFR Part 1273**

Federal home loan banks, Securities.

Accordingly, for reasons stated in the Supplementary Information, FHFA hereby proposes to amend 12 CFR parts 1239 and 1273 as follows:

### **Subchapter B—Regulated Entities**

#### **PART 1239—[AMENDED]**

1. The authority citation for part 1239 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), and 4526.

2. Add new § 1239.14 to subpart C to read as follows:

**§ 1239.14 Strategic business plan.**

(a) *Adoption of strategic business plan.* Each board of directors shall adopt and have in effect at all times a strategic business plan for the regulated entity that describes, at a minimum, how the business activities of the regulated entity will achieve its mission and public purposes consistent with its authorizing statute, the Safety and Soundness Act, and, in the case of a Bank, part 1265 of this chapter. Specifically, each regulated entity's strategic business plan shall at a minimum:

(1)(i) In the case of a Bank, articulate measurable operating goals and objectives for each significant business activity and for all authorized new business activities, which must include plans for maximizing activities that further the Bank's housing finance and community lending mission, consistent with part 1265 of this chapter;

(ii) In the case of an Enterprise, articulate measurable operating goals and objectives for each significant existing activity and for all authorized new activities;

(2) Discuss how the regulated entity will address credit needs and market opportunities identified through ongoing market research and stakeholder consultations;

(3) Describe any significant activities in which the regulated entity is planning to be engaged, including any changes to business strategy or approach that the regulated entity is planning to undertake, and discuss how such activities would further the regulated entity's mission and public purposes;

(4)(i) In the case of a Bank, be supported by appropriate and timely research and analysis of relevant market developments and member and housing associate demand for Bank products and services;

(ii) In the case of an Enterprise, be supported by appropriate and timely research and analysis

of relevant market developments; and

(5) Identify current and emerging risks, including those associated with the regulated entity's existing activities or new activities, and discuss how the regulated entity plans to address emerging risks while furthering its public purposes and mission in a safe and sound manner.

(b) *Review and monitoring.* Each board of directors shall:

(1) Review the regulated entity's strategic business plan at least annually;

(2) Re-adopt the strategic business plan for the regulated entity at least every three years; and

(3) Establish management reporting requirements and monitor implementation of the strategic business plan and the operating goals and objectives contained therein.

**§ 1239.31 [Removed and reserved]**

3. Remove and reserve § 1239.31.

**Subchapter D—Federal Home Loan Banks**

**PART 1273—[AMENDED]**

4. The authority citation for part 1273 continues to read as follows:

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

**§ 1273.8 [Amended]**

5. Section 1273.8(d)(2) is amended by removing the reference to “§ 1239.31” and adding in its place “§ 1239.14.”

Dated: April 2, 2018.

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

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