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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1290

RIN 2590-AA96

**Federal Home Loan Bank Community Support Program—Administrative
Amendments**

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final rule amending its community support regulation to require that FHFA establish relevant dates for FHFA’s biennial community support review by written notice to the Federal Home Loan Banks (Banks). The amendments do not affect the substantive requirements of the regulation and do not change the criteria for determining member compliance with the community support standards and eligibility for access to long-term Bank advances.

DATES: This final rule will take effect on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

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numbers.) The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Community Support Regulation Established Under the Bank Act

Section 10(g) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to adopt regulations establishing standards of community investment or service for members of Banks to maintain access to long-term Bank advances. 12 U.S.C. 1430(g). Section 10(g) states that such regulations “shall take into account factors such as a member’s performance under the Community Reinvestment Act of 1977 (CRA) and the member’s record of lending to first-time homebuyers.”

FHFA’s current community support regulation implements section 10(g). 12 CFR part 1290. The regulation details the CRA and first-time homebuyer standards that have been established pursuant to section 10(g). Each Bank member, except as provided in the regulation, must meet these standards in order to maintain access to long-term Bank advances.¹ A long-term advance is defined as an advance with a term to maturity greater than one year. 12 CFR 1290.1. The regulation sets forth the process that FHFA follows in reviewing, evaluating, and communicating each member’s community support performance. The regulation also requires each Bank to establish and maintain a community support program that includes providing technical assistance to its members.

B. Review Schedule Under the Current Regulation

Under the current community support regulation, each Bank member subject to

¹ The regulation excepts non-depository Community Development Financial Institutions, and excepts new members. 12 CFR 1290.2(d), (e).

community support review must submit to FHFA a completed Community Support Statement once every two years. The regulation establishes December 31 of each odd-numbered year as the submission deadline. FHFA provides instructions to the Banks each review cycle with detailed requirements for submissions, including the start date for the submission period. 12 CFR 1290.2(b)(1). For the 2017 review cycle, the instructions indicated that FHFA would begin accepting submissions on April 1, 2017.

The regulation also establishes two notice obligations for the Banks. Each Bank is required to provide notice to each of its members subject to community support review of the member's obligation to submit a Community Support Statement. Each Bank is also required to provide notice to its Advisory Council and other interested parties of the opportunity to submit comments on the activities of Bank members subject to community support review. The Banks are required to provide these notices by March 31 of each odd-numbered year.

II. Analysis of Final Rule

A. Establishment of Review Schedule via Written Notice

Submission Deadline

Under the current community support regulation, each Bank member subject to community support review must submit its completed Community Support Statement by December 31 of the applicable review year. 12 CFR 1290.2(b)(1). Many members submit their Community Support Statements close to the end of the calendar year. In the 2017 review, for example, 2,584 of the 6,690 Community Support Statements submitted by December 31 were submitted on or after November 1. This influx of submissions comes when both the Banks and FHFA face holiday-related staffing shortages and

multiple end-of-year obligations, including those related to community support review. For example, the Banks must provide requested technical assistance to members in completing the Community Support Statements. 12 CFR 1290.2(a). FHFA must review each submitted Community Support Statement and notify the Bank of its determination, and the Bank must then promptly notify each member of FHFA's determination. 12 CFR 1290.4.

FHFA expects that many Bank members subject to community support review are likely to continue to submit their Community Support Statements near the submission deadline. Moving the submission deadline away from the year-end holidays will reduce the burden on FHFA and the Banks. However, the most appropriate deadline for future review cycles may change based on FHFA's experience and based on feedback from the Banks and Bank members. Codifying a specific date in the regulation would unnecessarily limit FHFA's flexibility. Therefore, the final rule replaces the December 31 Community Support Statement submission deadline with a requirement that FHFA establish the submission deadline for each biennial community support review by written notice to the Banks. The final rule does not change the requirement that members subject to community support review be reviewed once every two years.

Notice Deadlines

The current regulation establishes March 31 of each odd-numbered year as the date by which each Bank must provide written notice to each of its members subject to community support review of the member's obligation to submit a Community Support Statement by the submission deadline. 12 CFR 1290.2(a). Because this date establishes the beginning of the biennial review cycle, retaining it in the regulation would limit

FHFA's ability to provide an appropriate amount of time for members to submit their Community Support Statements. Therefore, the final rule replaces the March 31 date with a requirement that FHFA establish, via written notice to the Banks, the date by which each Bank must provide written notice to each of its members subject to community support review of the member's obligation to submit a Community Support Statement by the submission deadline.

The current regulation also establishes March 31 of each odd-numbered year as the date by which each Bank must provide notice to its Advisory Council and other interested parties of the opportunity to submit comments on the activities of Bank members subject to community support review. 12 CFR 1290.2(c)(1). This date need not coincide with the deadline for the Banks to notify their members. However, these two dates currently coincide, and FHFA would like to retain the ability to continue this practice in future review cycles. Therefore, the final rule replaces this date with a requirement that the deadline for notice to Advisory Councils and other interested parties also be established by FHFA via written notice to the Banks.

Submission Acceptance Date

The current regulation does not provide a date by which FHFA will begin accepting Community Support Statements for a particular biennial review cycle. For the 2017 community support review, FHFA began accepting Community Support Statements on April 1, 2017. While members that are on probation or restriction may submit a Community Support Statement at any time to demonstrate compliance with the requirements of the regulation, most members will submit only one Community Support Statement in each biennial review cycle. Proper administration of the community support

review process requires the establishment of a starting point for each biennial review. Otherwise, submission at the discretion of the submitting members would effectively dictate the review schedule. Therefore, FHFA will continue to establish a date by which it will begin accepting Community Support Statements for review for each review cycle. The final rule requires that members submit their Community Support Statements in accordance with the submission dates designated by FHFA in the written notice to the Banks establishing the submission and notice deadlines.

Timing of FHFA Notice Establishing Review Schedule

While the final rule provides substantial flexibility for FHFA to establish appropriate deadlines for each step in the community support review process, FHFA recognizes that the Banks and Bank members will need adequate advance notice to allow them to prepare to meet their respective obligations under the regulation. To ensure that the Banks and members continue to have adequate time to prepare for the submission period, the final rule requires that FHFA notify the Banks of the applicable dates for the review period at least 90 days before the deadline for the Banks to notify their members.

2019 Community Support Review

For the 2019 biennial community support review, FHFA will issue the written notice establishing the applicable deadlines concurrently with or shortly after publication of this final rule in the *Federal Register*. FHFA intends to establish April 1, 2019 as the date on which FHFA will begin accepting Community Support Statements submitted for the 2019 review period. FHFA intends to establish October 31, 2019 as the date by which each member subject to community support review must submit a completed Community Support Statement for the 2019 review period. FHFA intends to establish

March 29, 2019 as the date by which each Bank must notify each of its members subject to community support review of its obligation to submit a completed Community Support Statement by the submission deadline. Finally, March 29, 2019 would also be the date by which each Bank must provide notice to its Advisory Council and other interested parties of the opportunity to submit comments on the activities of Bank members subject to community support review.

B. Clarifications and Updates

The final rule makes certain clarifying revisions to the community support regulation and removes outdated text.

Clarifications

The current regulation provides that the Banks must provide a blank Community Support Statement form to each member, and that FHFA will maintain a blank copy of the form on its website. 12 CFR 1290.2(a). Starting with the 2017 review cycle, FHFA has established an online process for submission of the Community Support Statements. Members are strongly encouraged to use the online submission system for submitting their Community Support Statements, although FHFA will accept hard copy submissions from members experiencing technical difficulties in submitting via the online process. The final rule amends the regulation to remove the outdated requirement to provide blank forms to each member, and to require instead that Banks provide a copy of the blank form upon request. In addition, FHFA maintains an informational version of the form on its website, but it is overlaid with explanatory text and therefore not a blank version of the form which any member could complete and submit. The blank form referenced in the regulation is transmitted directly by FHFA to the Banks. The final rule amends the

regulation to align with this practice.

Conforming Changes

The final rule removes an outdated transition provision in § 1290.2 that clarified the community support review obligations for the 2014-2015 review cycle of members who had already been selected for community support review during that review cycle. 12 CFR 1290.2(b)(2). The final rule also updates a cross-reference in § 1290.5 to reflect the revised paragraph numbering in §1290.2.

C. Section-by-Section Analysis of Final Rule

Section 1290.2

Paragraph (a)

The final rule removes all references to specific dates in paragraph (a) and provides that the applicable deadline will be established pursuant to new paragraph (f). The final rule removes the reference to FHFA's website, providing instead that the referenced blank Community Support Statement form will be provided by FHFA to the Banks. The final rule also removes the requirement that each Bank provide a blank copy of the Community Support Statement form to its members, replacing it with a requirement that each Bank provide the form upon request.

Paragraph (b)

The final rule removes all references to specific dates in paragraph (b)(1) and provides that the applicable deadline will be established pursuant to new paragraph (f). The final rule removes paragraph (b)(2) and redesignates paragraph (b)(1) as paragraph (b).

Paragraph (c)(1)

The final rule removes all references to specific dates in paragraph (c)(1) and provides that the applicable deadline will be established pursuant to new paragraph (f).

Paragraph (f)

The final rule adds new paragraph (f), which provides that FHFA will designate applicable dates for each biennial community support review via written notice to the Banks. Paragraph (f) provides that this notice will designate the dates referenced in paragraphs (a), (b) and (c)(1), and will be issued at least 90 days before the date by which each Bank must notify members of their community support review obligations under paragraph (a).

III. Notice and Public Participation

Section 553(b)(A) of the Administrative Procedures Act provides that when a regulation involves matters of agency organization, procedure, or practice, the agency may publish the regulation in final form without prior public notice and comment. 5 U.S.C. 553(b)(A). This final rule involves matters of agency procedure and practice. The final rule does not make any change to the substantive standards for compliance with the community support regulation. The changes in the final rule are limited to administrative changes in the process that FHFA uses to evaluate members. As a result, the final rule is exempt from the public notice and comment provisions of section 553.

IV. Considerations of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the FHFA Director, when promulgating regulations “of general applicability and future effect” relating to the Banks, to consider the differences between the Banks and the Enterprises as they may relate 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. In preparing this final rule, the Director considered the differences between the Banks and the Enterprises as they relate to these factors. The rule would apply only to the Banks. There is no direct Enterprise-specific analog to the Banks' community support requirements. Under the existing community support regulation, it is possible that a Bank member's access to long-term advances may be restricted as a result of a failure to meet the community support standards. While such restrictions may affect an individual member's access through the Bank to liquidity for home mortgage financing, they do not fundamentally change the role of the Banks in providing such liquidity, and the restriction is mandated by the Bank Act in such a case. See 12 U.S.C. 1430(g). In any case, the final rule would not make any substantive change to these provisions governing member restriction. Consequently, the Director has determined the rule to be appropriate.

V. Regulatory Impacts

A. Paperwork Reduction Act

FHFA currently collects information from Bank members regarding their compliance with the community support requirements under existing part 1290. Existing part 1290 also permits Bank members whose access to long-term advances has been restricted for failure to meet the community support requirements to apply directly to FHFA to remove the restriction under certain circumstances. The current collection of information has been approved by the Office of Management and Budget (OMB), and the control number, OMB No. 2590-0005, will expire on March 31, 2020. The final rule amends the community support provisions in part 1290 but does not substantively or

materially modify the approved information collection with respect to the members' information collection burden.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this final rule under the Regulatory Flexibility Act. FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

VI. Congressional Review Act

FHFA has determined that this regulatory action does not qualify as a "rule" under the Congressional Review Act. *See* 5 U.S.C. 804(3).

List of Subjects in 12 CFR Part 1290

Banks and banking, Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, FHFA is amending title 12, chapter XII, part 1290, of the Code of Federal Regulations as follows:

PART 1290—COMMUNITY SUPPORT REQUIREMENTS

1. The authority citation for part 1290 is revised to read as follows:

Authority: 12 U.S.C. 1430(g).

2. Revise § 1290.2 to read as follows:

§ 1290.2 Community support requirements.

(a) *Bank notice to members.* By a date designated by FHFA notice pursuant to paragraph (f) of this section, each Bank must provide written notice to each of its members subject to community support review that each such member must submit to FHFA a completed Community Support Statement in accordance with the requirements of paragraph (b) of this section. Unless instructed otherwise by FHFA, the Bank must provide to each member a blank Community Support Statement Form upon request by the member. FHFA will provide a copy of this blank form to the Bank. Upon a member's request, the Bank must provide assistance to the member in completing the Community Support Statement.

(b) *Community Support Statement submission requirements.* Except as provided in paragraphs (d) and (e) of this section, in each odd-numbered year, each member must submit to FHFA a completed Community Support Statement (and any other related information FHFA may require) in accordance with the submission dates designated by FHFA notice pursuant to paragraph (f) of this section. The member's completed Community Support Statement must be executed by an appropriate senior officer of the member and must be submitted to FHFA pursuant to FHFA's submission instructions.

(c) *Notice to public.--(1) By the Banks.* By a date designated by FHFA notice pursuant to paragraph (f) of this section, each Bank must provide written notice to its Advisory Council, and to interested nonprofit housing developers, community groups, and other interested parties in its district, and include a notice on its public Web site, of

the opportunity to submit comments on the community support programs and activities of Bank members, with the name and address of each member subject to community support review, and the deadline and FHFA contact information for submission of any comments to FHFA.

(2) *By FHFA.* FHFA may publish a notice in the *Federal Register* notifying the public of the opportunity to submit comments on the community support programs and activities of Bank members, with the deadline and FHFA contact information for submission of any comments to FHFA.

(3) *Consideration of comments.* In reviewing a member for compliance with the community support requirements, FHFA will take into consideration any public comments it has received concerning the member.

(d) *Non-Depository Community Development Financial Institutions.* A member that has been certified as a community development financial institution by the CDFI Fund, other than a member that also is an insured depository institution or a CDFI credit union (as defined in 12 CFR 1263.1), is deemed to be in compliance with the community support requirements of section 10(g) of the Federal Home Loan Bank Act (12 U.S.C. 1430(g)) and this part, by virtue of that certification. Such non-depository CDFIs, therefore, are not required to submit Community Support Statements to FHFA under paragraph (b) of this section and are not subject to community support review under this part.

(e) *New Bank members.* A member of a Bank is not required to submit a Community Support Statement under paragraph (b) of this section if the institution has

been a member of a Bank for a total of less than one year as of March 31 of the year in which submissions are due under paragraph (b) of this section.

(f) *Designation of submission and notice dates.* FHFA will designate applicable dates for each biennial review cycle via written notice to the Banks. The notice will designate the date by which FHFA will begin accepting Community Support Statements and the date by which Community Support Statements must be submitted, as well as the dates by which the Banks must notify members under paragraph (a) of this section and the public under paragraph (c)(1) of this section. FHFA's written notice to the Banks will be issued at least 90 days prior to the date by which the Banks must notify members under paragraph (a).

§ 1290.5 [Amended]

3. Amend § 1290.5 by removing “§1290.2(b)(1)” in paragraph (b)(1) and adding in its place “§1290.2(b).”

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

October 2, 2018_____
Date

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