

(d) of this section, or the last extension thereof, you may seek judicial review under 5 U.S.C. 552(a)(4).

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

(a) *Applications for Expedited Processing.* You may apply for expedited processing of an initial request or of an appeal. Your application must be in writing. FHFA will grant expedited processing, and give the request or appeal priority if your application demonstrates a compelling need for expedited processing by showing—

(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 government's integrity, affecting public confidence; or

(5) Humanitarian need.

(b) *Certification of Compelling Need.* Your application for expedited processing must include a statement certifying that the reasons you present to demonstrate a compelling need are true and correct to the best of your knowledge.

(c) *Determination on Application.* FHFA will notify you within ten (10) days of receipt of your application whether expedited processing has been granted. If your application is denied, you may appeal under section 1202.9.

**§ 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 in search time, and/or to review and duplicate records.

(2) *Educational Institution, Noncommercial Scientific Institution, Representative of the News Media.* If you are not requesting records for commercial use and you are an educational institution, a noncommercial scientific institution or a representative of the news media, the fees that FHFA may assess are limited to FHFA's costs incurred 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 FHFA may assess you are limited to the costs FHFA incurs in search time and review in excess of two hours and to duplicate in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) *Fee Schedule.* FHFA will maintain a current schedule of fees on its Web site at: <http://www.fhfa.gov>.

(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, FHFA will notify you 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 FOIA request will not be considered received by FHFA until you agree to pay the anticipated total fee.

(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 only if—

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

(2) 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. If 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 31st 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 shall be assessed at the rate prescribed by 31 U.S.C. 3717 and shall 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 staff to modify or reformulate your request to meet your needs at a lower cost.

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

These FOIA regulations in this part do 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 FOIA. This part only provides procedures for requesting records under FOIA.

Dated: January 9, 2009.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

[FR Doc. E9-808 Filed 1-14-09; 8:45 am]

BILLING CODE 8070-01-P

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1250**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1773**

**RIN 2590-AA09**

**Flood Insurance**

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

**ACTION:** Final regulation.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing a final regulation that codifies the authority and responsibility of FHFA to oversee and enforce the statutory requirements affecting the operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage

Corporation under the Flood Disaster Protection Act of 1973, as amended, and to effect congressionally mandated adjustments to the civil money penalties applicable to violations of that law.

**DATES:** The final regulation is effective February 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Andra Grossman, Counsel, telephone (202) 343-1313 (not a toll-free number); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Proposed Rulemaking**

The FHFA published a proposed Flood Insurance regulation for public comment in the *Federal Register*, 73 FR 60198 (October 10, 2008). No comments were received. Accordingly, the proposed regulation is adopted as a final regulation with technical changes as described below under Section II.C. Background, Adjustment of civil money penalties for inflation.

**II. Background**

*A. Establishment of the Federal Housing Finance Agency*

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Act) to establish FHFA as an independent agency of the Federal Government.<sup>1</sup> The FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (collectively, Regulated Entities) and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Act and rules, regulation, guidelines and orders issued under the Act, and the respective authorizing statutes of the Regulated Entities; and carry out their missions through activities authorized and consistent with the Act and their authorizing statutes; and, that the activities and operations of the Regulated Entities are consistent with the public interest.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the

Federal Housing Finance Board (FHFB) will be abolished one year after enactment of the HERA. However, the Regulated Entities continue to operate under regulations promulgated by OFHEO and FHFB and such regulations are enforceable by the Director of FHFA until such regulations are modified, terminated, set aside, or superseded by the Director of FHFA.<sup>2</sup>

*B. Flood Insurance Responsibilities*

The National Flood Insurance Act of 1968<sup>3</sup> and the FDPA,<sup>4</sup> as amended by the National Flood Insurance Reform Act of 1994 (NFIRA),<sup>5</sup> together create a comprehensive National Flood Insurance Program that includes various provisions designed to ensure that structures built in flood plains are covered by statutory minimum amounts of flood insurance. The NFIRA has specific requirements explicitly applicable to the Enterprises.<sup>6</sup> It originally designated OFHEO as the Federal agency responsible for determining compliance of the Enterprises' flood insurance responsibilities and provided OFHEO with the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA.<sup>7</sup> The NFIRA also authorized OFHEO to impose civil money penalties upon an Enterprise that fails to implement procedures reasonably designed to ensure that the loans it purchases comply with the mandatory flood insurance purchase requirements.<sup>8</sup>

Section 1161(e) of HERA amended section 102(f)(3)(A) of the FDPA (42 U.S.C. 4012a(f)(3)(a)), by replacing OFHEO with FHFA as the agency responsible for determining compliance of the Enterprises' flood insurance responsibilities. Thus, FHFA issues this regulation to codify the authority and responsibility of FHFA to oversee and enforce the statutory requirements affecting the operations of the Enterprises under the FDPA, and to effect congressionally mandated adjustments to the civil money penalties applicable to violations of that law. This final regulation, when effective, will

supersede the OFHEO Flood Insurance regulation at 12 CFR part 1773.

The Enterprises have a key role in the implementation of the Federal government's flood insurance program, particularly with regard to lenders that are not subject to direct supervision by a Federal regulatory agency. The Enterprises use their seller/servicer guidelines and other quality control review procedures to ensure that lenders with whom they contract comply with the applicable flood insurance laws. More specifically, each Enterprise is required to implement procedures reasonably designed to ensure that any mortgage loan that is purchased and is secured by property located in a designated flood hazard area is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of (1) the outstanding principal balance of the loan or (2) the maximum limit of coverage made available for that type of property.<sup>9</sup>

*C. Adjustment of Civil Money Penalties for Inflation*

The FDPA sets forth the procedures under which the Director of FHFA may impose civil money penalties against an Enterprise and the amounts of these civil money penalties.<sup>10</sup> This regulation adjusts the amounts of these civil money penalties in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (Inflation Adjustment Act).<sup>11</sup> The increases in maximum civil money penalty amounts do not mandate the amount of any civil money penalty that FHFA may seek for a particular violation. FHFA continues to determine each civil money penalty on a case-by-case basis in light of the circumstances of the case.

The Inflation Adjustment Act requires Federal agencies that have authority to issue civil money penalties to issue regulations that adjust each civil money penalty that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of civil money penalties and promote compliance with the law. The Inflation Adjustment Act requires agencies to make an initial adjustment of their civil money penalties upon the statute's enactment, and to make additional adjustments on an ongoing basis, at least once every four years following the initial adjustment.

<sup>2</sup> See sections 1302 and 1312 of HERA.

<sup>3</sup> Codified at 42 U.S.C. 4001 *et seq.* and other scattered sections of 42 U.S.C.

<sup>4</sup> Codified at 42 U.S.C. 4002 *et seq.* and other scattered sections of 42 U.S.C.

<sup>5</sup> Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law No. 103-325 (Sept. 23, 1994) (codified, as amended, at 42 U.S.C. 4001-4129, and other sections of the United States Code).

<sup>6</sup> 42 U.S.C. 4012a(b)(3).

<sup>7</sup> 42 U.S.C. 4001 note (Pub. L. 103-325, Title V, Section 583).

<sup>8</sup> 42 U.S.C. 4012a(f)(3).

<sup>9</sup> 42 U.S.C. 4012a(b)(3).

<sup>10</sup> 42 U.S.C. 4012a(f)(3).

<sup>11</sup> 28 U.S.C. 2461 note.

<sup>1</sup> See Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," TITLE I, Section 1101 of HERA.

Under the Inflation Adjustment Act, the inflation adjustment for each applicable civil money penalty is determined by increasing the maximum civil money penalty amount by a cost-of-living adjustment. As is described in detail below, the Inflation Adjustment Act provides that this cost-of-living adjustment is to reflect the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) since the civil money penalties were last adjusted or established.

The Inflation Adjustment Act directs Federal agencies to calculate each civil money penalty adjustment as the percentage by which the CPI-U for June of the calendar year preceding the adjustment exceeds the CPI-U for June of the calendar year in which the amount of such civil money penalty was last set or adjusted pursuant to law. When OFHEO issued the Flood Insurance regulation in 2001, the maximum civil money amounts of \$350 (for each violation) and \$100,000 (maximum annual amount for each Enterprise), found at 42 U.S.C. 4012a(f)(5), were adjusted to \$385 and \$110,000, respectively.<sup>12</sup>

OFHEO did not subsequently adjust these civil money penalty amounts. Because FHFA is making this adjustment in calendar year 2009, rather than in 2008 as indicated in the proposed regulation, the inflation amount for each civil money penalty is calculated by comparing the CPI-U for June 2001 (178.000), the calendar year OFHEO last adjusted the civil money penalty, with the CPI-U for June 2008 (218.815), rather than with the CPI-U for June 2007 (208.235). This results in an inflation adjustment of 22.93 percent in 2009, rather than an inflation adjustment of 17.05 percent if the Flood Insurance regulation had been published as final in 2008. For each civil money penalty, the product of this inflation adjustment and the previous maximum penalty amount is then rounded in accordance with the specific requirements of the Inflation Adjustment Act and added to the previous maximum penalty amount to determine the new adjusted penalty amount.<sup>13</sup> Accordingly, the civil money

penalty maximum of \$385 is increased to \$485 for each violation, as was proposed. The civil money penalty maximum of \$110,000 is increased to \$140,000 in 2009, rather than increased to \$130,000 as proposed, for the total assessed penalties against an Enterprise during any calendar year. The increase would apply only to violations which occur after the effective date of this regulation.

### III. Section-by-Section Analysis

#### *Section 1250.1 Purpose*

This section sets forth the responsibilities of the Enterprises under the FDPA and the procedures to be used by FHFA in any proceeding to assess civil money penalties against an Enterprise under FDPA.

#### *Section 1250.2 Procedural Requirements*

Section 1250.2 sets forth the requirement that each Enterprise is to implement procedures reasonably designed to ensure that properties securing particular loans are properly insured in accordance with the National Flood Insurance Act of 1968, as amended. Consistent with 42 U.S.C. 4012a(4), it also sets forth that the procedures need apply only to loans made, increased, extended, or renewed after September 22, 1995. The section further provides that the procedural requirements do not apply to any loan having an original outstanding principal balance of \$5,000 or less and a repayment term of one year or less.<sup>14</sup>

#### *Section 1250.3 Civil Money Penalties*

Section 1250.3 sets forth procedures under which the Director of FHFA may impose civil money penalties against an Enterprise. The Director may assess a civil money penalty against an Enterprise determined by the Director to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to § 1250.2. The increase applies only to violations which occur after the date the increase takes effect.

The section also sets forth notice and hearing requirements prior to the imposition of civil money penalties. A civil money penalty may be issued only after notice and an opportunity for a hearing on the record has been provided.

In addition, the section sets forth the maximum amount of civil money penalties that may be imposed on an Enterprise under the regulation. A civil money penalty may not exceed the adjusted statutory amount of \$485 for

each violation and the total amount of penalties assessed against an Enterprise during any calendar year may not exceed the adjusted statutory cap of \$140,000.

Furthermore, in accordance with 42 U.S.C. 4012a(f)(8), (9), and (10), § 1250.3 provides that—

(1) Any civil money penalties collected under this section are to be paid into the National Flood Mitigation Fund in accordance with 42 U.S.C. 4104d,

(2) Any civil money penalty is in addition to any civil remedy or criminal penalty otherwise available, and

(3) No penalty may be imposed after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized.

### Regulatory Impact

#### *Paperwork Reduction Act*

This regulation 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 will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The FHFA has considered the impact of the regulation under the Regulatory Flexibility Act. The 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 Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

### List of Subjects

#### *12 CFR Part 1250*

Government-sponsored enterprises, Flood insurance, Penalties, Reporting and recordkeeping requirements.

#### *12 CFR Part 1773*

Administrative practice and procedure, Flood insurance, Penalties, Reporting and recordkeeping requirements.

<sup>12</sup> 66 FR 65101 (Dec. 18, 2001); 12 CFR part 1773.

<sup>13</sup> The rounding rules of the Inflation Adjustment Act require that each increase be rounded to the nearest multiple as follows: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$5,000 in the case of penalties greater than \$200,000.

<sup>14</sup> 42 U.S.C. 4012a(c)(2).

## Authority and Issuance

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

### CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

■ 1. Add Subchapter C, consisting of part 1250 to read as follows:

#### Subchapter C—Enterprises

### PART 1250—FLOOD INSURANCE

Sec.

1250.1 Purpose.

1250.2 Procedural requirements.

1250.3 Civil money penalties.

**Authority:** 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

#### § 1250.1 Purpose.

The purpose of this part is to set forth the responsibilities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) under the Flood Disaster Protection Act of 1973 (FDPA), as amended (42 U.S.C. 4002 *et seq.*) and the procedures to be used by the Federal Housing Finance Agency (FHFA) in any proceeding to assess civil money penalties against an Enterprise.

#### § 1250.2 Procedural requirements.

(a) *Procedures.* An Enterprise shall implement procedures reasonably designed to ensure for any loan that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*), as amended and purchased by the Enterprise, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended.

(b) *Applicability.* (1) Paragraph (a) of this section shall apply only with respect to any loan made, increased, extended, or renewed after September 22, 1995.

(2) Paragraph (a) of this section shall not apply to any loan having an original outstanding balance of \$5,000 or less and a repayment term of one year or less.

#### § 1250.3 Civil money penalties.

(a) *In general.* If an Enterprise is determined by the Director of FHFA, or his or her designee, to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to § 1250.2, the Director of FHFA, or his or her designee, may assess civil money penalties against such Enterprise in such amount or amounts as deemed to be appropriate under paragraph (c) of this section.

(b) *Notice and hearing.* A civil money penalty under this section may be assessed only after notice and an opportunity for a hearing on the record has been provided to the Enterprise.

(c) *Amount.* The maximum civil money penalty amount is \$385 for each violation that occurs before the effective date of this part, with total penalties not to exceed \$110,000. For violations that occur on or after the effective date of this part, the civil money penalty under this section may not exceed \$485 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed \$140,000.

(d) *Deposit of penalties.* Any penalties under this section shall be paid into the National Flood Mitigation Fund in accordance with section 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d.), as amended.

(e) *Additional penalties.* Any penalty under this section shall be in addition to, and shall not preclude, any civil remedy, or criminal penalty otherwise available.

(f) *Statute of limitations.* No civil money penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this section.

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

#### PART 1773—[REMOVED]

■ 2. Remove part 1773.

Dated: January 8, 2009.

**James B. Lockhart III,**  
Director, Federal Housing Finance Agency.  
[FR Doc. E9-809 Filed 1-14-09; 8:45 am]

BILLING CODE 8070-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2008-0982; Airspace Docket No. 08-ANM-6]

#### Modification of Class E Airspace; Alamosa, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action will amend Class E airspace at Alamosa, CO. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at San Luis Valley Regional Airport/Bergman Field. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at San Luis Valley Regional Airport/Bergman Field, CO.

**DATES:** *Effective Date:* 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

#### SUPPLEMENTARY INFORMATION:

#### History

On October 28, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Alamosa, CO, (73 FR 63912). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. With the exception of editorial changes, this rule is the same as that proposed in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

#### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by