

other regions otherwise eligible at that increment level.

\* \* \* \* \*

3. In § 1209.38, paragraphs (l) and (m) are redesignated as paragraphs (m) and (n) respectively and new paragraph (l) is added to read as follows:

**§ 1209.38 Powers.**

\* \* \* \* \*

(l) To develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms.

\* \* \* \* \*

**§ 1209.230 [Removed and Reserved]**

4. Section 1209.230 is removed and reserved.

Dated: June 2, 2009.

**David R. Shipman,**

*Acting Administrator.*

[FR Doc. E9-13152 Filed 6-4-09; 8:45 am]

BILLING CODE 3410-02-P

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1230**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1770**

RIN 2590-AA12

**Executive Compensation**

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

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to issue an Executive Compensation regulation. The proposed regulation sets forth requirements and processes with respect to compensation provided to executive officers by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, and the Office of Finance, consistent with the safety and soundness responsibilities of FHFA under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008.

**DATES:** Comments on the Notice of Proposed Rulemaking must be received on or before August 4, 2009. For

additional information, see

**SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** You may submit your comments on the proposed regulation, identified by regulatory identifier number (RIN) 2590-AA12 by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA12, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA12, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov). Please include "RIN 2590-AA12" in the subject line of the message.

- *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 the agency. Include the following information in the subject line of your submission: Executive Compensation Proposed Rule, RIN 2590-AA12.

**FOR FURTHER INFORMATION CONTACT:**

Daniel E. Coates, Associate Director Risk Analysis and Research, Office of Federal Home Loan Bank Regulation, (202) 408-2959, Patrick Lawler, Associate Director, Office of Policy Analysis and Research, Chief Economist, (202) 414-3746, or Tina Dion, Associate General Counsel, (202) 414-3838 (not toll free numbers), 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. Comments**

FHFA invites comments on all aspects of the proposed regulation and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at <http://www.fhfa.gov>.

In addition, copies of all comments received will be available for

examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-3751.

**II. Background**

The Federal Housing Finance Agency (FHFA) was created on July 30, 2008, when the President signed into law the Housing and Economic Recovery Act of 2008 (HERA).<sup>1</sup> HERA created a regulator with all of the authorities necessary to oversee vital components of our country's secondary mortgage markets—the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (Banks). In addition, this law combined the staffs of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the GSE mission office at the Department of Housing and Urban Development (HUD). By pooling the expertise of the staffs of OFHEO, FHFB, and HUD, Congress strengthened the regulatory and supervisory oversight of the 14 housing-related Government-Sponsored Enterprises (GSEs). Such regulation of the GSEs will promote a stronger, safer U.S. housing finance system.

More specifically, HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act or Act) to establish FHFA as an independent agency of the Federal Government.<sup>2</sup> FHFA was established to oversee the prudential operations of Fannie Mae, Freddie Mac (collectively, Enterprises), and the 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.

<sup>1</sup> Public Law 110-289, 122 Stat. 2654.

<sup>2</sup> See Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

OFHEO and FHFB will be abolished one year after enactment of HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB until such regulations are superseded by regulations promulgated by FHFA.

### III. Proposed Regulation

The proposed regulation, when published in its final form, would supersede the OFHEO Executive Compensation regulation, 12 CFR part 1770. The proposed regulation is issued to effect sections 1113 and 1117 of HERA. Section 1113 addresses the authority of the Director to prohibit and withhold compensation of executive officers of the regulated entities. Section 1117 provides the Director with temporary authority to approve, disapprove, or modify the executive compensation of the regulated entities.

The proposed regulation also continues the Director's authority under the charter acts of the Enterprises to prior approve agreements or contracts of executive officers that provide compensation in connection with termination of employment. A similar prior approval authority for the Director of termination benefits of executive officers provided by the Banks is not set forth under the Federal Home Loan Bank Act or HERA. However, the total payment or value derived from termination benefits are included in the FHFA's review of compensation provided by the Banks to their executive officers to determine whether the overall compensation is reasonable and comparable. This is because the term "compensation" is broadly defined to include benefits to an executive officer that are derived from post-employment benefit plans or programs and other compensatory benefit arrangements containing termination benefits, which affect the executive officer individually or as part of a group. As a result, FHFA reviews the value of benefits provided under such plans, programs and arrangements on an ongoing basis in exercising its review authority. FHFA aggregates the benefits provided under such plans, programs and arrangement with all other payments of money or any other thing of current or potential value to determine whether an officer's overall "compensation" is reasonable and comparable.

Additionally, the proposed regulation is issued to ensure that the regulated entities and the Office of Finance comply with processes used by FHFA in its oversight of executive compensation. The processes require the submission of relevant information by the regulated entities and the Office of Finance on a

timely basis, in a format deemed appropriate by FHFA, to enable FHFA to efficiently carry out its executive compensation functions. For reasons noted above, as with the Enterprises, information required to be submitted to FHFA for its review and consideration by the Banks includes information relating to termination benefits for their executive officers. Additionally, although the Office of Finance is not directly covered by section 1113 of HERA, it is subject to the Director's "general regulatory authority" under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)), as amended by HERA. Therefore, in order to ensure safety and soundness, and to comply with the Director's authority relating to golden parachutes and indemnification payments (noted below), information submission requirements under the proposed regulation also apply to the Office of Finance, as does the Director's authority to prohibit excessive compensation.

Notably, in addition to the Director's authority under section 1113 of HERA to prohibit and withhold compensation of executive officers of the regulated entities (as effected in the proposed regulation), section 1114 of HERA provides the Director with additional authority to address golden parachutes and indemnification payments by the Enterprises and the Banks to entity-affiliated parties. FHFA has issued an interim final rule that clarifies the standards it will employ in exercising its authority regarding golden parachute payments.<sup>3</sup> FHFA also has issued a final rule on golden parachute payments that sets forth factors to be considered by the Director of FHFA in acting upon the Director's authority to limit golden parachute payments to entity-affiliated parties in connection with the regulated entities.<sup>4</sup>

Section 1313(f) of the Act (12 U.S.C. 4513(f)), as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, 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. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors.

The Director recognizes that there are differences between the Enterprises and the Banks in size, complexity, and function. Therefore, the approach by FHFA to oversight of executive compensation may differ in certain aspects between the Enterprises and the Banks. For example, in order to take into account the Banks' size and structure, FHFA may consider the Federal Reserve Banks and the Farm Credit Banks as examples of appropriate comparators to assess the reasonableness and comparability of executive compensation provided by the Banks. Also, in consideration of the Banks' size and structure, the Director's oversight of compensation may cover a smaller number of positions in comparison to covered executive officer positions for the Enterprises. To accommodate any differences in aspects of executive compensation between the Enterprises and the Banks, FHFA will address such differences through an establishment of policies for appropriate compensation packages and termination benefits, and will provide routine guidance to the regulated entities. Except to the extent that the proposed rule distinguishes between the Enterprises and the Banks, the Director believes that the differences related to the factors set forth in 12 U.S.C. 4513(f) do not result in the need for substantively dissimilar coverage under the proposed regulation as both the Enterprises and the Banks, as "regulated entities," are subject to the same statutory requirements with respect to oversight of their executive compensation by the Director. However, the Director requests comments from the public about whether differences related to these factors should result in a revision to the proposed regulation as they relate to the Banks.

### IV. Section-by-Section Analysis

#### Section 1230.1 Purpose

Proposed § 1230.1 provides that the purpose of the regulation is to implement requirements relating to the supervisory authority of FHFA under the Act with respect to compensation provided by the regulated entities and the Office of Finance to their executive officers. Additionally, the regulation would codify the structured process established by the Director for submission of relevant information by

<sup>3</sup> See Golden Parachute Payments and Indemnification Payments—Interim Final Regulation with Request for Comments, 73 FR 53356 (September 16, 2008), with Correcting Amendments at 73 FR 54309 (September 19, 2008) and 73 FR 54673 (September 23, 2008), codified at 12 CFR 1231. See also, Proposed Amendment for Golden Parachute and Indemnification Payments, 73 FR 67424 (November 14, 2008).

<sup>4</sup> See Golden Parachute Payments, 74 FR 5101 (January 29, 2009), to be codified at 12 CFR 1231.

the regulated entities, and the Office of Finance, in order to facilitate and enhance the efficiency of oversight of executive compensation by FHFA.

#### *Section 1230.2 Definitions*

Proposed § 1230.2 would define certain terms as used in the regulation.

#### *Section 1230.3 Prohibition and Withholding of Executive Compensation*

Proposed § 1230.3 addresses the Director's authority to prohibit and withhold compensation provided by a regulated entity and the Office of Finance to an executive officer that is not reasonable and comparable; the prohibition of a regulated entity and the Office of Finance from providing compensation to an executive officer that is not reasonable and comparable; the type of factors that the Director may take into consideration in determining whether compensation to an executive officer is reasonable and comparable; certain prohibitions applicable to and during the Director's review of compensation; the effect of prior approval of an agreement or contract pursuant to § 1230.4 with respect to any subsequent determination under the Director's authority to prohibit and withhold executive compensation; and the form and manner in which the Director shall provide approval pursuant to paragraph (e)(1) of this section.

Paragraph (e)(2) of this section limits the requirement for Director's prior approval set forth in paragraph (e)(1) by specifying the types and circumstances of compensation subject to the requirement. Paragraph (e)(2)(i) states that approval is necessary for certain written arrangements: (a) A written arrangement that provides an executive officer a term of employment of six months or more; or (b) a written arrangement that provides compensation in connection with the termination of employment; or establishes a policy of compensation in connection with the termination of employment. It is noted that if the Director has approved a corporate-wide or "Top Hat" policy for a Bank or the Office of Finance that provides termination benefits to its executive officers, any individual written arrangement that does not exceed termination benefits provided under such a policy would not require prior approval of the Director.

Paragraph (e)(2)(ii) of § 1230.3 requires the prior approval of annual compensation, bonuses, and other incentive pay provided by a Bank to the president or by an Enterprise to the chief executive officer. Finally,

paragraph (e)(2)(iii) states that prior approval would be required in the event that the Director provides the regulated entity or the Office of Finance with written notice of a specific review of compensation to be provided to an executive officer.

#### *Section 1230.4 Prior Approval of Termination Benefits*

Proposed § 1230.4 provides the general requirement that an Enterprise must obtain the prior approval of the Director with respect to agreements or contracts that provide termination benefits to an executive officer. The proposed section also clarifies the agreements or contracts subject to the prior approval requirement, as well as factors that the Director may consider in determining whether to approve or disapprove the termination benefits. Additionally, the section provides an exception to the prior approval requirement.

#### *Section 1230.5 Submission Requirements*

Proposed § 1230.5 describes the information, *i.e.*, the types of materials and timeframe for submission, that the regulated entities, as well as the Office of Finance, would be required to provide to FHFA in order to facilitate the exercise of the Director's oversight of executive compensation under the Act. The section provides that the information shall be submitted in a format, *i.e.*, hardcopy or electronic, as deemed appropriate by FHFA.

#### *Section 1230.6 Temporary Power in Connection With Executive Compensation*

Proposed § 1230.6 provides that, notwithstanding any provision of this part, effective July 30, 2008, through December 31, 2009, the Director may approve, disapprove, or modify the executive compensation of a regulated entity. For purposes of the proposed section, the term "executive compensation" has the same meaning as defined under Regulation S-K, 17 CFR part 229. This section implements the authority granted the Director by section 1117 of HERA.

#### *Section 1230.7 Compliance*

Proposed § 1230.7 provides that failure by a regulated entity or the Office of Finance to comply with the requirements of this part may result in supervisory action by FHFA. Such action may be taken in the form determined appropriate by the Director and may be taken separately from, in conjunction with, or in addition to any other corrective or remedial action,

including an enforcement action to require an individual to make restitution to or reimbursement of excessive compensation or inappropriately paid termination benefits.

### **Regulatory Impacts**

#### *Paperwork Reduction Act*

The proposed 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). FHFA has considered the impact of the proposed regulation under the Regulatory Flexibility Act. FHFA certifies that the proposed regulation, if adopted, 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 regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

### **List of Subjects**

#### *12 CFR Part 1230*

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

#### *12 CFR Part 1770*

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

### **Authority and Issuance**

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

## CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

### SUBCHAPTER B—ENTITY REGULATIONS

1. Add part 1230 to Subchapter B to read as follows:

#### PART 1230—EXECUTIVE COMPENSATION

Sec.

1230.1 Purpose.

1230.2 Definitions.

1230.3 Prohibition and withholding of executive compensation.

1230.4 Prior approval of termination benefits.

1230.5 Submission requirements.

1230.6 Temporary power in connection with executive compensation.

1230.7 Compliance.

**Authority:** 12 U.S.C. 1427, 1431(l)(5), 1452(h), 1455(l)(5), 4502(6), 4502(12), 4513, 4514, 4517, 4518, 4526, 4631, 4632, 4636, 1719(g)(5), 1723a(d).

##### § 1230.1 Purpose.

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

##### § 1230.2 Definitions.

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

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

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

*Director* means the Director of FHFA, or his or her designee.

*Enterprise* means the Federal National Mortgage Association and the Federal

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

*Entity-affiliated party* means—

(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;

(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

(i) The independent contractor knowingly or recklessly participates in—

(A) Any violation of any law or regulation;

(B) Any breach of fiduciary duty; or

(C) Any unsafe or unsound practice; and

(ii) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(5) The Office of Finance.

*Executive officer* means—

(1) With respect to an Enterprise:

(i) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairman, any executive vice president, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

(ii) Any senior vice president (SVP) or other individual with similar responsibilities, without regard to title:

(A) Who is in charge of a principal business unit, division or function, or

(B) Who reports directly to the regulated entity's chairman of the board of directors, vice chairman, president or chief operating officer.

(2) The Director shall inform the Enterprises of those officers covered by this definition.

(3) With respect to a Bank:

(i) Executive officers about whom the Banks must publicly disclose detailed compensation information under Regulation S-K, 17 CFR part 229, issued by the Securities and Exchange Commission;

(ii) Any other executive who occupies one of the following positions or is in charge of one of the following subject areas:

(A) Overall Bank operations, such as the Chief Operating Officer or equivalent;

(B) Chief Financial Officer or equivalent;

(C) Chief Administrative Officer or equivalent;

(D) Chief Risk Officer or equivalent;

(E) Asset and Liability Management, or equivalent;

(F) Chief Accounting Officer or equivalent;

(G) General Counsel or equivalent;

(H) Strategic Planning or equivalent;

(I) Internal Audit or equivalent;

(J) Chief Information Officer or equivalent; or

(iii) Any other individual, without regard to title:

(A) Who is in charge of a principal business unit, division or function, or

(B) Who reports directly to the Bank's chairman of the board of directors, vice chairman, president or chief operating officer.

(4) The Director may add or remove persons, positions, or functions to or from the list set forth in paragraph (3)(ii) of this definition by communication to the Banks or a Bank from time to time.

(5) With respect to the Office of Finance:

(i) Any individual who occupies a position in any of the top five pay bands; or

(ii) Any individual, without regard to title, who is in charge of a principal business unit, division, or function.

*Federal Home Loan Bank or Bank* means a bank established under the Federal Home Loan Bank Act; the term "Federal Home Loan Banks" or "Banks" means, collectively, all the Federal Home Loan Banks.

*FHFA* means the Federal Housing Finance Agency.

*Office of Finance* means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

*Reasonable and comparable* means compensation that is—

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

(i) Unique duties and responsibilities of the position as contrasted with comparable positions at other firms;

(ii) Absence of duties and responsibilities of the position as contrasted with comparable positions at other firms;

(iii) Compensating factors that indicate added or diminished risks,

constraints, or aids in carrying out the responsibilities of the position relative to comparable positions at other firms as well as within the entity; and

(iv) Performance of the regulated entity or the specific employee with respect to achievement of goals and compliance with applicable law, regulation, guidance, and internal rules of the entity.

(2) *Comparable*—compensation that, taken in total or in part, does not materially exceed benefits paid at similar institutions for similar duties and responsibilities. In particular, comparable includes consideration of benefit levels and comparability of duties and responsibilities.

(i) *Benefit levels*—FHFA generally considers comparable to be at or below the median compensation for a given position at similar institutions. In particular circumstances, consideration, as described in paragraph (1) of this definition, may indicate the appropriateness of higher or lower benefit amounts to which FHFA would not object.

(ii) *Similar institutions*—FHFA considers similar institutions for the Banks and Enterprises to be institutions that are similar in size, complexity and function, and may communicate such institutions or types of institutions to the Banks and Enterprises from time to time.

*Regulated entity* means the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; or any Federal Home Loan Bank; the term “regulated entities” means, collectively, the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; and any Federal Home Loan Bank.

*Safety and Soundness Act or Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, (12 U.S.C. 4501 *et seq.*), as amended by the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654 (2008).

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

(a) *In general.* The Director may review the compensation arrangements for any executive officer of a regulated entity or the Office of Finance at any time, and shall prohibit the regulated entity or the Office of Finance from providing compensation to any such executive officer that the Director determines is not reasonable and comparable with compensation for employment in other similar businesses

(including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities. No regulated entity or the Office of Finance shall pay compensation to an executive officer that is not reasonable and comparable with compensation paid by such similar businesses involving similar duties and responsibilities.

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

(c) *Withholding of compensation.* During a review under paragraph (a) of this section, the Director may require a regulated entity or the Office of Finance to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account.

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

(e) *Prohibition of payment or agreement by regulated entity.* (1) Subject to paragraph (e)(2) of this section, a regulated entity or the Office of Finance shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed by the Director under § 1230.3.

(2) For purposes of paragraph (e)(1) of this section, the requirement for the Director’s prior approval applies only to:

- (i) Any written arrangement that:
  - (A) Provides an executive officer a term of employment for a term of six months or more; or
  - (B) Provides compensation in connection with the termination of employment, or establishes a policy of compensation in connection with the termination of employment.
- (ii) Annual compensation, bonuses, and other incentive pay provided by a Bank to the president or by an Enterprise to the chief executive officer; or
- (iii) Any compensation to be provided to an executive officer for whom the

Director has provided the regulated entity or the Office of Finance with written notice that the compensation is subject to a specific review by the Director.

(f) *Effect of prior approval of an agreement or contract.* The Director’s approval of an executive officer’s termination of employment benefits pursuant to § 1230.4 shall not preclude the Director from making any subsequent determination under this section to prohibit and withhold executive compensation.

(g) *Form of approval.* The Director’s approval pursuant to paragraph (e)(1) of this section may occur in such form and manner as the Director shall provide through written notice to the regulated entities or the Office of Finance.

### § 1230.4 Prior approval of termination benefits.

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

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

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

- (1) Whether the benefits provided under the agreement or contract are comparable to benefits provided under such agreements or contracts for officers of other public or private entities involved in financial services and housing interests who have comparable duties and responsibilities;
- (2) The factors set forth in § 1230.3(b); and
- (3) Such other information as deemed appropriate by the Director.

(d) *Exception to prior approval.* An employment agreement or contract subject to prior approval of the Director under this section may be entered into prior to that approval, provided that such agreement or contract specifically provides notice that termination benefits under the agreement or contract

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

#### § 1230.5 Submission requirements.

(a) *In general.* Any information required to be submitted for purposes of obtaining approval of the Director under this part must be provided in a timely fashion by each regulated entity and the Office of Finance to the Director or as otherwise specified in guidance or other issuances of FHFA.

(b) *Information relating to prohibition and withholding of executive compensation.* The following materials, unless otherwise specified, shall be provided by each regulated entity and the Office of Finance to FHFA, in a format deemed appropriate by FHFA, for review within one week after the specified action or event—

(1) Resolutions, with no redactions, including supporting materials and related reports, from meetings of the board committee responsible for compensation when the committee takes any action regarding a compensation matter that under the committee's authority is effective without further action by the committee or the board of directors of the regulated entity;

(2) Resolutions, with no redactions, including supporting materials and related reports, not otherwise provided to FHFA under paragraph (b)(1) of this section, from meetings of the board of directors relating to executive compensation when the board of directors takes any action regarding a compensation matter that is effective without any further action by the board of directors;

(3) Minutes, with no redactions, including supporting materials and related reports, when adopted by the committee responsible for compensation and those portions of minutes of the board of directors, including supporting materials and related reports, related to compensation matters, except for materials previously provided under paragraphs (b)(1) or (2) of this section;

(4) General benefit plans applicable to executive officers when adopted or amended;

(5) Any study conducted by or on behalf of a regulated entity or the Office

of Finance with respect to compensation of executive officers, when delivered;

(6) With respect to an Enterprise, the annual compensation report to Congress when submitted to Congress;

(7) A current organizational chart when changes occur affecting the status of executive officers under this part;

(8) Proxy statements when issued; and

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

(c) *Timing of submissions related to prior approval of termination benefits.*

An Enterprise shall provide all relevant information to FHFA, unless already provided under paragraph (b) of this section:

(1) Except as provided in § 1230.4(d), before an Enterprise enters into any agreement or contract with a new or existing executive officer that includes termination benefits;

(2) Before an Enterprise makes any extension or other amendment to such an agreement or contract;

(3) Before an Enterprise takes any other action to provide termination benefits to a specific executive officer, regardless of how effected; or

(4) When an Enterprise makes any changes to the termination provisions of any compensation or benefit program affecting multiple executive officers.

(d) *Specific information required for calculation of termination benefits.* For submissions relating to termination benefits, a regulated entity and the Office of Finance shall submit to FHFA, in a format deemed appropriate by FHFA, the following materials:

(1) The details of the agreement or program change, *e.g.*, employment agreements, termination agreements, severance agreements, and portions of minutes of the board of directors relating to executive compensation and minutes and supporting materials of the committee of the board of directors responsible for compensation;

(2) All information, data, assumptions and calculations for the potential total dollar value or range of values of the benefits provided, such as, but not limited to salary, bonus opportunity, short-term incentives, long-term incentives, special incentives and pension provisions or related contract or benefit terms; and

(3) Such other information deemed appropriate by the Director, except that information required to be submitted under paragraph (c) of this section or under this paragraph shall not include information on benefit plans of general applicability.

#### § 1230.6 Temporary power in connection with executive compensation.

Notwithstanding any provision of this part, effective July 30, 2008, through

December 31, 2009, the Director may approve, disapprove, or modify the executive compensation of a regulated entity. For purposes of this section, the term "executive compensation" has the same meaning as defined under Regulation S-K, 17 CFR part 229.

#### § 1230.7 Compliance.

Failure by a regulated entity or the Office of Finance to comply with the requirements of this part may result in supervisory action by FHFA. Such action may be taken in the form determined appropriate by the Director and may be taken separately from, in conjunction with, or in addition to any other corrective or remedial action, including an enforcement action to require an individual to make restitution to or reimbursement of excessive compensation or inappropriately paid termination benefits.

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

#### PART 1770—[REMOVED]

2. Remove part 1770.

May 29, 2009.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

[FR Doc. E9-13117 Filed 6-4-09; 8:45 am]

BILLING CODE P

### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0509; Directorate Identifier 2009-CE-029-AD]

RIN 2120-AA64

#### Airworthiness Directives; PILATUS Aircraft Ltd. Model PC-7 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This Airworthiness Directive (AD) is prompted due to reported corrosion on the