

## Federal Housing Finance Agency

## § 1213.3

(b) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 1212.3 also may be subject to other administrative, civil, or criminal remedies or penalties as provided in law.

(c) *Procedural rights.* The procedures applicable to actions under paragraph (a) of this section are those provided in the Safety and Soundness Act under section 1376, in connection with the imposition of a civil money penalty; under section 1377, in connection with a removal and prohibition order (12 U.S.C. 4636 and 4636a, respectively); and under any regulations issued by FHFA implementing such procedures.

### PART 1213—OFFICE OF THE OMBUDSMAN

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AUTHORITY: 12 U.S.C. 4511(b)(2), 4517(i), and 4526.

SOURCE: 76 FR 7481, Feb 10, 2011, unless otherwise noted.

#### § 1213.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish within FHFA the Office of the Ombudsman (Office) under section 1317(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(i)), as amended, and to set forth the authorities and duties of the Ombudsman.

(b) *Scope.* (1) This part applies to complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity regarding any matter relating to the regulation and supervision of such regulated entity or the Office of Finance by FHFA.

(2) The establishment of the Office does not alter or limit any other right or procedure associated with appeals, complaints, or administrative matters submitted by a person regarding any

matter relating to the regulation and supervision of a regulated entity or the Office of Finance under any other law or regulation.

#### § 1213.2 Definitions.

For purposes of this part, the term:

*Business relationship* means any existing or potential interaction between a person and a regulated entity or the Office of Finance for the provision of goods or services. The term *business relationship* does not include any interaction between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.

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

*FHFA* means the Federal Housing Finance Agency.

*Office of Finance* means the Office of Finance of the Federal Home Loan Bank System.

*Person* means an organization, business entity, or individual that has a business relationship with a regulated entity or the Office of Finance, or that represents the interests of a person that has a business relationship with a regulated entity or the Office of Finance. The term *person* does not include an individual borrower.

*Regulated entity* means the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, and any Federal Home Loan Bank.

#### § 1213.3 Authorities and duties of the Ombudsman.

(a) *General.* The Office shall be headed by an Ombudsman, who shall consider complaints and appeals from any regulated entity, the Office of Finance, and any person that has a business relationship with a regulated entity or the Office of Finance regarding any matter relating to the regulation and supervision of such regulated entity or the Office of Finance by FHFA. In considering any complaint or appeal under this part, the Ombudsman shall:

(1) Conduct inquiries and submit findings of fact and recommendations to the Director concerning resolution of the complaint or appeal, and

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(2) Act as a facilitator or mediator to advance the resolution of the complaint or appeal.

(b) *Other duties.* The Ombudsman shall:

(1) Establish procedures for carrying out the functions of the Office,

(2) Establish and publish procedures for receiving and considering complaints and appeals, and

(3) Report annually to the Director on the activities of the Office, or more frequently, as determined by the Director.

### § 1213.4 Complaints and appeals from a regulated entity or the Office of Finance.

(a) *Complaints.* (1) *General.* Any regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman.

(2) *Matters subject to complaint.* A regulated entity or the Office of Finance may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance by FHFA that is not subject to appeal or in litigation, arbitration, or mediation. The Ombudsman may further define what matters are subject to complaint.

(b) *Appeals.* (1) *General.* Any regulated entity or the Office of Finance may submit an appeal in accordance with procedures established by the Ombudsman.

(2) *Matters subject to appeal.* A regulated entity or the Office of Finance may submit an appeal regarding any final, written regulatory or supervisory conclusion, decision, or examination rating by FHFA. The Ombudsman may further define what matters are subject to appeal.

(3) *Matters not subject to appeal.* Matters for which there is an existing avenue of appeal or for which there is another forum for appeal; non-final decisions or conclusions; and matters in ongoing litigation, arbitration, or mediation, unless there has been a breakdown in the process, may not be appealed. Matters not subject to appeal include, but are not limited to, appointments of conservators or receivers, preliminary examination conclusions, formal enforcement decisions,

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formal and informal rulemakings, Freedom of Information Act appeals, final FHFA decisions subject to judicial review, and matters within the jurisdiction of the FHFA Inspector General. The Ombudsman may further define what matters are not subject to appeal.

(4) *Effect of filing an appeal.* An appeal under this section does not excuse a regulated entity or the Office of Finance from complying with any regulatory or supervisory decision while the appeal is pending. However, the Director, upon consideration of a written request, may waive compliance with a regulatory or supervisory decision during the pendency of the appeal.

### § 1213.5 Complaints from a person.

(a) *General.* Any person that has a business relationship with a regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman.

(b) *Matters subject to complaint.* A person may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance by FHFA that is not a matter in litigation, arbitration, or mediation. The Ombudsman may further define what matters are subject to complaints.

### § 1213.6 No retaliation.

Neither FHFA nor any FHFA employee may retaliate against a regulated entity, the Office of Finance, or a person for submitting a complaint or appeal under this part. The Ombudsman shall receive and address claims of retaliation. Upon receiving a complaint, the Ombudsman, in coordination with the Inspector General, shall examine the basis of the alleged retaliation. Upon completion of the examination, the Ombudsman shall report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

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### § 1213.7 Confidentiality.

The Ombudsman shall ensure that safeguards exist to preserve confidentiality. If a party requests that information and materials remain confidential, the Ombudsman shall not disclose the information or materials, without approval of the party, except to appropriate reviewing or investigating officials, such as the Inspector General, or as required by law. However, the resolution of certain complaints (such as complaints of retaliation against a regulated entity or the Office of Finance) may not be possible if the identity of the party remains confidential. In such cases, the Ombudsman shall discuss with the party the circumstances limiting confidentiality.

## PART 1214—AVAILABILITY OF NON-PUBLIC INFORMATION

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- 1214.1 Definitions.
- 1214.2 Purpose and scope.
- 1214.3 General rule.
- 1214.4 Exceptions.

AUTHORITY: 5 U.S.C. 301, 552; 12 U.S.C. 4501, 4513, 4522, 4526, 4639.

SOURCE: 78 FR 39958, July 3, 2013, unless otherwise noted.

### § 1214.1 Definitions.

*Confidential supervisory information* means information prepared or received by FHFA that meets all of the following criteria:

- (1) The information is not a document prepared by a regulated entity or the Office of Finance for its own business purposes that is in its possession;
- (2) The information is exempt from the Freedom of Information Act, 5 U.S.C. 552 (1966); and
- (3) The information—(i) Consists of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports, or  
(ii) Is gathered by FHFA in the course of any investigation, suspicious activity report, cease-and-desist order, civil money penalty enforcement order, suspension, removal or prohibition order, or other supervisory or enforcement orders or actions taken under the

Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Public Law 102-550, 122 Stat. 2654.

*Disclosure* means release or divulgence of information by any person to a person outside of FHFA.

*FHFA employee* means strictly for the purpose of this regulation, any person employed by FHFA, including any current or former officer, intern, agent, contractor or contractor personnel, or detailee of FHFA, and any person employed by the FHFA Office of the Inspector General (FHFA-OIG), including any current or former officer, intern, agent, contractor or contractor personnel, or detailee of FHFA-OIG.

*Non-public information* means information that FHFA has not made public that is created by, obtained by, or communicated to an FHFA employee in connection with the performance of official duties, regardless of who is in possession of the information. This includes confidential supervisory information as defined above. It does not include information or documents that FHFA has disclosed under the Freedom of Information Act (5 U.S.C. 552; 12 CFR part 1202), or Privacy Act of 1974 (5 U.S.C. 552a; 12 CFR part 1204). It also does not include specific information or documents that were previously disclosed to the public at large or information or documents that are customarily furnished to the public at large in the course of the performance of official FHFA duties, including but not limited to: Disclosures made by the Director pursuant to 24 CFR subpart F, and any FHFA successor rules; the annual report that FHFA submits to Congress pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), press releases, FHFA blank forms, and materials published in the FEDERAL REGISTER.

*Person* means individual or business entity.

### § 1214.2 Purpose and scope.

(a) *Purpose.* The purpose of this part is to control the dissemination of non-public information, which includes confidential supervisory information, and maintain its controlled, sensitive, privileged, or proprietary nature, as appropriate.