

Rules and Regulations

Federal Register

Vol. 76, No. 28

Thursday, February 10, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 907

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1213

RIN 2590-AA20

Office of the Ombudsman

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency.

ACTION: Final regulation.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting a final regulation that establishes an Office of the Ombudsman, which is responsible for considering complaints and appeals from the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (collectively, regulated entities), the Federal Home Loan Bank System's 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 the regulated entities or the Office of Finance by FHFA.

DATES: *Effective Date:* March 14, 2011.

FOR FURTHER INFORMATION CONTACT: Sandy Comenetz, Executive Advisor to the Acting Director, (202) 414-3771, or Andra Grossman, Senior Counsel, (202) 343-1313 (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. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-

289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.¹ FHFA was established to oversee the prudential operations of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, Enterprises), and the Federal Home Loan Banks (FHLBanks); and to ensure that they operate in a safe and sound manner; remain adequately capitalized; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and their respective authorizing statutes, as well as all rules, regulations, guidelines, and orders and carry out their missions through activities that are authorized by their respective statutes and are consistent with the public interest. FHFA also has regulatory authority over the FHLBank System's Office of Finance under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)).

Section 1105(e) of HERA amended section 1317(i) of the Safety and Soundness Act (12 U.S.C. 4517(i)) to require the Director of FHFA to establish, by regulation, an Office of the Ombudsman (Office). The Office must be headed by an Ombudsman who will consider 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. The regulation must specify the authority and duties of the Office.

On August 6, 2010, FHFA published for comment a proposed regulation to establish an Office of the Ombudsman at FHFA.² The proposed regulation set forth the authority and duties of the Office, and included provisions concerning retaliation and confidentiality.

FHFA received comment letters from Fannie Mae; Freddie Mac; the FHLBanks of Des Moines, Pittsburgh, Seattle, and Topeka; and Wells Fargo Home Mortgage. All comments were

considered and have been posted on the FHFA Web site at <http://www.fhfa.gov>. A discussion of significant comments as they relate to the final regulation follows.

II. Final Regulation

Specific concerns raised by commenters are described and addressed below. After considering the comments, FHFA adopts a final regulation implementing section 1317(i) of the Safety and Soundness Act as amended by section 1105(e) of HERA to establish an FHFA Office of the Ombudsman.

Scope of Ombudsman's Authority

Several commenters requested that the final regulation clarify that the following types of matters—business decisions of the regulated entities, disputes between the regulated entities or the Office of Finance and vendors, and matters in litigation—are not within the scope of the Office's responsibilities. They requested that the Ombudsman's authority be expressly limited to complaints concerning FHFA's regulatory and supervisory activities.

FHFA's view is that business decisions of the regulated entities, and disputes between the regulated entities or the Office of Finance and vendors may relate to the regulation and supervision of the regulated entities. It is the Ombudsman's responsibility to consider the facts of each case to determine whether the matter is appropriate for consideration. Accordingly, there is no need for clarifying language.

As to the requested language about matters in litigation, FHFA agrees, and the final regulation specifically provides that the Ombudsman will not consider matters in litigation, arbitration, or mediation.

Several commenters requested that the final regulation permit appeals of non-final decisions or conclusions, and also in situations where there is an existing avenue or another forum for appeal. FHFA declines to allow appeals to the Ombudsman in such circumstances on the grounds that to do so would be inefficient and would lead to confusion as to the status of the respective appeals.

One commenter requested that the regulation authorize the Ombudsman to (i) Engage in a collaborative dialogue with the person that has a business

¹ See Division A, "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

² 74 FR 47495.

relationship with the regulated entity, (ii) revise a requirement of the regulated entities, and (iii) revise an interpretation of the regulated entities.

Engaging in a collaborative dialogue as a facilitator or mediator is the essence of the Ombudsman's role and does not need further clarification. In contrast, revising a requirement of a regulated entity or an interpretation of a regulated entity's charter does not come within the Ombudsman's authority because the Ombudsman is not a decision maker. However, as with any complaint or appeal, where a supervisory or regulatory requirement or a charter interpretation is challenged, the Ombudsman is authorized to conduct inquiries and submit findings of fact and make a recommendation to the Director concerning resolution of the issue. Accordingly, FHFA concludes there is no need for further clarification of these issues.

Definitions

Business Relationship. In the proposed regulation "business relationship" means a relationship or potential relationship between a person and a regulated entity or the Office of Finance that involves the provision of goods or services, but does not mean a relationship between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.

Several commenters requested that the definition exclude "potential relationships" because including them would, in their terms, exponentially increase the universe of persons to whom the regulation would apply. They noted that the operative provision, 12 U.S.C. 4517(i), does not use the word "potential." FHFA will not make the change because, like existing business relationships, a potential business relationship may relate to FHFA's regulation and supervision of a regulated entity. FHFA has made a technical revision to the definition of the term "business relationship," by substituting the term "interaction" for "relationship" in the body of the definition.

Person. In the proposed regulation, "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 directly or indirectly the interests of a person that has a business relationship with a regulated entity or the Office of Finance. It does not mean an individual borrower.

Some commenters requested that the definition expressly exclude employees to clarify that a dispute between a

regulated entity or the Office of Finance and an employee would not come within the Ombudsman's purview. The commenters' rationale is that there are other forums for such disputes, namely State or Federal court.

As the Ombudsman evaluates the facts of each case to determine whether the matter is appropriate for consideration, FHFA's view is that adding the requested language is unnecessary and could lead to confusion as to whether employees may complain about FHFA policies that affect them.

The same commenters requested that the Ombudsman be required to notify a regulated entity of any whistleblower complaint in which the entity is named so that the entity will be able to address the matter quickly. FHFA is not required to provide such notification under applicable law, but will do so as it deems appropriate under the circumstances. No additional language will be added to the final regulation.

Reviews of Disputed Supervisory Determinations

One commenter asked whether the Office is intended to replace the process under 12 CFR 907.9 by which FHLBanks may seek review of a disputed supervisory determination, or whether it is intended to be an alternate path of appeal. The answer is that the Ombudsman's responsibility to consider complaints and appeals from regulated entities replaces the § 907.9 process. All of the regulated entities and the Office of Finance may submit appeals of final supervisory determinations to the Ombudsman for consideration. The Ombudsman will conduct an inquiry and submit findings of fact and a recommendation to the Director concerning resolution of the case. Consequently, 12 CFR 907.9 will be removed on the effective date of this part.

No Retaliation

Proposed § 1213.6 provides that 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. As proposed, the Ombudsman would receive and address complaints of retaliation and upon completion of an investigation, report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

FHFA did not receive comments from the public on the proposed section. However, subsequent to publication of the proposed rule, the FHFA Inspector

General was appointed and confirmed. Accordingly, FHFA has revised § 1213.6 to provide that the Ombudsman, in coordination with the Inspector General, is to examine the basis of the alleged retaliation. At the completion of the examination, the Ombudsman is to report the findings to the Director with recommendations, including any recommendation to take disciplinary action against any FHFA employee found to have retaliated.

Confidentiality

One commenter requested that § 1213.7 of the final regulation permit parties to request that their identity or specific information remain confidential. The final regulation, as does the proposed regulation, requires the Ombudsman to ensure that safeguards exist to preserve confidentiality, and prohibits the Ombudsman from disclosing information, including a party's identity, provided by a party except to appropriate reviewing or investigating officials or if disclosure is required by law. The final regulation clarifies that an appropriate investigating official may include the Inspector General.

Differences Between the FHLBanks and the Enterprises

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the FHLBanks, to consider the differences between the FHLBanks and the Enterprises with respect to the FHLBanks' 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. The Director considered the differences between the FHLBanks and the Enterprises as they relate to the above factors and concluded that none of the unique factors relating to the FHLBanks warranted establishing different treatment under the final regulation.

III. Regulatory Impact

Paperwork Reduction Act

The final regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget 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 final regulation under the Regulatory Flexibility Act. FHFA certifies that the final regulation is not likely to have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

List of Subjects*12 CFR Part 907*

Administrative practice and procedure, Federal home loan banks.

12 CFR Part 1213

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

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511(b)(2), 4517(i), and 4526, the Federal Housing Finance Agency amends Chapters IX and XII of Title 12, Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD**PART 907—PROCEDURES**

- 1. The authority citation for part 907 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1).

§ 907.9 [Removed and reserved]

- 2. Remove and reserve § 907.9.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**SUBCHAPTER A—ORGANIZATION AND OPERATIONS**

- 3. Add part 1213 to subchapter A to read as follows:

PART 1213—OFFICE OF THE OMBUDSMAN

Sec.

- 1213.1 Purpose and scope.
1213.2 Definitions.

1213.3 Authorities and duties of the Ombudsman.

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

1213.5 Complaints from a person.

1213.6 No retaliation.

1213.7 Confidentiality.

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

§ 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

(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, 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.

§ 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.

Dated: February 3, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011-2845 Filed 2-9-11; 8:45 am]

BILLING CODE 8070-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 45, 110, 119, 121, 129, and 135

[Docket No. FAA-2009-0140; Amendment Nos. 45-27, 110-1, 119-14, 121-353, 129-49, and 135-124]

RIN 2120-AJ45

Operations Specifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment clarifies and standardizes the rules for applications by foreign air carriers and foreign persons for part 129 operations specifications and establishes new standards for amendment, suspension, and termination of those operations specifications. In addition, the FAA has moved definitions currently contained in a subpart to a separate part for clarity with no substantive changes to the definitions. The amendment also applies to foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. This action is necessary to update the process for issuing operations specifications and establishes a regulatory basis for current practices, such as amending, terminating, or suspending operations specifications.

DATES: *Effective Date:* These amendments become effective April 11, 2011.

Compliance Date: The compliance date for § 129.9(a)(2) and (b)(2) is

February 10, 2012. Affected parties do not have to comply with the information collection requirement in § 129.7 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995. Compliance with all other provisions of the final rule is required by April 11, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Darcy D. Reed, International Programs and Policy Division, AFS-50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail: Darcy.D.Reed@faa.gov; Telephone: 202-385-8078. For legal questions concerning this final rule contact Lorna John, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail: Lorna.John@faa.gov; Telephone: 202-267-3921.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is issued under the authority described in Title 49 of the United States Code, subtitle VII, part A, subpart III, section 44701(a)(5). Under that section, the Administrator is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary to ensure safety in air commerce. Clarifying and standardizing the rules for application and establishing new standards for amendment, suspension, and termination of operations specifications issued to foreign air carriers operating in the United States and to foreign air carriers or foreign persons conducting common carriage operations with U.S.-registered aircraft solely outside the United States enhances the FAA's oversight of U.S.-registered aircraft and those foreign air carriers' operations within the United States.