



BILLING CODE: 8070-01-P

FEDERAL HOUSING FINANCE AGENCY

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 906, and 956-999

RIN 2590-AA91

Repeal of Federal Housing Finance Board Regulations

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

ACTION: Proposed Rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to repeal two parts of the Federal Housing Finance Board (Finance Board) regulations, one of which defines terms used in Finance Board regulations and one of which describes the process by which the Finance Board conducted its monthly interest rate survey (MIRS). The definitions to be repealed are either obsolete or duplicate definitions that FHFA has previously adopted. The regulation relating to the MIRS has become outdated because it does not accurately describe the manner in which FHFA currently conducts the survey. Although FHFA intends to continue to conduct the MIRS in the same manner as it is doing presently, there is no need to carry over this provision into its own regulations. FHFA also is proposing to repeal a number of subchapters of the Finance Board regulations that it had previously reserved, but which no longer serve any purpose because they include no regulatory text.

DATES: Written comments must be received on or before [INSERT DATE 45 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit your comments, identified by Regulatory Information Number (RIN) 2590-AA91, by any of the following methods:

- *Agency Web site:* www.fhfa.gov/open-for-comment-or-input.
- *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 email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Please include Comments/RIN 2590-AA91 in the subject line of the submission.
- *Courier/Hand Delivery:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/ RIN 2590-AA91, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA91, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20219. Please note that all mail sent to FHFA via the U.S. Mail service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Vickie R. Olafson, Assistant General Counsel, *Vickie.Olafson@FHFA.gov*, (202) 649-3025 (this is not a toll-free number), Federal Housing Finance Agency, 400 Seventh Street, SW., Washington, DC 20219. 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 this proposed rule. FHFA will make all comments timely received available for examination by the public through the electronic rulemaking docket for this proposed rule, which is located on the FHFA website at <http://www.fhfa.gov>. Such comments will be posted without change and will include any personal information you provide, such as name, address, e-mail address, and telephone number. After considering all comments, FHFA will issue a final rule.

II. Background

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA),¹ created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Finance Board over the Federal Home Loan Banks (Banks), the oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises), and certain functions of the Department of Housing and Urban Development.² Under section 1313(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), FHFA is responsible for ensuring that the Banks and the

¹ HERA, Pub. L. 110-289, 122 Stat. 2654.

² *See id.* at section 1101, 122 Stat. 2661-62 (codified at 12 U.S.C. 4511, 4511 note, and 4513).

Enterprises operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities.³ The Banks and the Enterprises remain subject to, and continue to operate under, regulations promulgated by the Finance Board and by OFHEO and HUD, respectively, until such regulations are superseded by regulations issued by FHFA.⁴ The Finance Board regulations that are the subject of this rulemaking have remained in effect pursuant to that authority.

III. The Proposal

A. Definitions – Finance Board Part 900

FHFA proposes to repeal part 900 of the Finance Board regulations, which includes definitions of forty-two terms that had been used throughout the Finance Board regulations. In 2013, FHFA carried over into its own regulations, at part 1201, most of the Finance Board definitions, but did not repeal the Finance Board definitions at that time because a number of substantive Finance Board regulations that used those terms remained in effect.⁵ Since 2013, FHFA has relocated or repealed all of the substantive Finance Board regulations, other than those relating to Bank capital requirements, which are the subject of a separate rulemaking.⁶ Accordingly, FHFA is now proposing to repeal all of the definitions within part 900 of the Finance Board regulations. Certain of those defined terms, however, such as “capital plan,” “excess stock,” and “advance,” are used within the Finance Board capital regulations at parts 930 and 932, which likely will

³ 12 U.S.C. 4513(a).

⁴ *Id.* at 4511 note.

⁵ *See* Relocation of Regulations, 78 FR 2319 (Jan. 11, 2013).

⁶ *See* Proposed rule, Federal Home Loan Bank Capital Requirements, 82 FR 30776 (July 3, 2017).

remain in effect during an extended transition period to the new FHFA Bank capital regulations. Each of those terms is well understood by the Banks and also has been carried over into the FHFA definitions at part 1201 without substantive change.

Accordingly, to the extent that any interpretive questions may arise with respect to parts 930 and 932 after FHFA repeals the definitions in part 900, the Banks may look to the identical definitions in part 1201 of the FHFA regulations to address those questions.

B. Finance Board Part 906

FHFA proposes to repeal Part 906 of the Finance Board Regulations, consisting of reserved subparts A and C, and subpart B, § 906.5, which describes the manner in which the Finance Board conducted the “Monthly Survey of Rates and Terms on Conventional One-Family Non-farm Mortgage Loans” commonly referred to as the “Monthly Interest Rate Survey” or “MIRS.” The MIRS is a monthly survey of mortgage lenders that solicits information on the terms and conditions on all conventional, single-family, fully amortizing, purchase-money mortgage loans closed during the last five working days of the preceding month. It was originally conducted by the Federal Home Loan Bank Board (FHLBB), and was continued by the Finance Board, in accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the legislation that abolished the FHLBB and established the Finance Board as its successor. FHFA also has continued to conduct the survey and publish the data tables monthly, as successor to the Finance Board.

Historically, two housing finance benchmarks have been based on data obtained through the MIRS: (1) the “national average one-family house price,” which, between 1980 and 2008, Fannie Mae and Freddie Mac were statutorily required to use in making

annual adjustments to the conforming loan limit;⁷ and (2) the Adjustable Rate Mortgage (ARM) Index, which at one time was widely used by lenders in determining the appropriate periodic interest rate adjustment on their ARM loans.

Adjustments in the conforming loan limits for Fannie Mae and Freddie Mac are no longer based on data collected through the MIRS. Some lenders, however, may still use FHFA's ARM Index, which is derived from MIRS data, as one factor in pricing mortgage loans that they originate. In addition, businesses, trade associations, and government agencies at both the federal and state level rely upon the MIRS data for various business and regulatory purposes.

FHFA intends to continue conducting the MIRS and publishing the data results on its website monthly. Because the current MIRS regulation includes an outdated description of the manner in which the survey is conducted, however, and is not necessary in order to implement the statutory mandate that FHFA conduct the survey, FHFA has determined that the regulation is unnecessary.⁸ Therefore, FHFA is proposing to repeal part 906 in its entirety, consisting of the MIRS regulation in subpart B, § 906.5, and reserved subparts A and C.

C. Finance Board Parts 956-999 [Reserved] and Subchapters F-M [Reserved]

FHFA proposes to repeal parts 956-999 of title 12 of the CFR, which are Finance Board provisions that are designated as “[r]eserved.” These reserved parts are currently the only items under subchapters F-M of chapter IX of title 12. Because these parts

⁷ The Housing and Community Development Act of 1980 tied the Fannie Mae and Freddie Mac conforming loan limits to MIRS. *See* Pub. L. 96-399, Title III, section 313(a), (b), 94 Stat. 1644-45 (Oct. 8, 1980).

⁸ *See* Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, Title IV, section 402(e), 103 Stat. 359-360 (Aug. 9, 1989), codified at 12 U.S.C. 1437 note (regarding the continuation of the ARM Index).

contain no substantive provisions, there is nothing to revise and relocate to the FHFA regulations. Nonetheless, unless FHFA affirmatively removes the reference to those parts as being reserved and removes subchapters F-M those references and empty subchapters F-M would remain in the CFR after FHFA has removed or relocated all of the other substantive Finance Board regulations. Therefore, in the interest of ensuring that all Finance Board regulations that will not be carried forward into the FHFA regulations are removed, FHFA is repealing parts 956-999 and subchapters F-M in their entirety.

IV. Considerations of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the FHFA Director, when promulgating regulations “of general applicability and future effect” relating to the Banks, to consider the differences between the Banks and the Enterprises as they may relate to the Banks’ cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability.⁹ With respect to the repeal of Finance Board regulations subject to this rulemaking, this proposal does not impose any new obligations on the Banks, but instead simply removes existing Finance Board regulations that either have been previously carried over to the FHFA regulations or, as a result of the passage of HERA and changed circumstances, are obsolete, unnecessary and no longer of any regulatory purpose. Further, the repeal of parts 900, 906 and 956-999 of title 12 of the

⁹ 12 U.S.C. 4513(f).

CFR would not have a “future effect” on the rights and responsibilities of the Banks. For all of these reasons, a statutory differences analysis is not required for this final rule.¹⁰

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.¹¹ Under the PRA and the implementing regulations of the Office of Management and Budget (OMB), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid control number assigned by OMB.¹² The MIRS addressed by 12 CFR 906.5 is a collection of information that OMB has approved under control number 2590-0004, which is due to expire on September 30, 2020.

Although the proposed rule would remove the descriptive provision regarding the MIRS that now appears at 12 CFR 906.5, that removal would not change any aspect of the information collection; that is, FHFA would continue to conduct the survey in accordance with the terms of the existing PRA clearance. Therefore, FHFA has not submitted to OMB a request to approve a revision to control number 2590-0004.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to analyze a proposed rule’s impact on small entities if the final rule is expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this rulemaking and determined that it is not likely to

¹⁰ This is consistent with prior FHFA rulemakings that involved only the repeal of Finance Board regulations. *See* Repeal of Regulations, 76 FR 74648 (Dec. 1, 2011).

¹¹ *See* 44 U.S.C. 3507(a) and (d).

¹² *See* 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).

have a significant economic impact on a substantial number of small entities because, even assuming it had an economic impact, it would apply only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 900

Federal home loan banks, Office of Finance, Regulated entity.

12 CFR Part 906

Conventional one-family non-farm mortgage loans, Government contracts, Minority businesses, Monthly interest rate survey, Mortgages, Reporting and recordkeeping requirements.

12 CFR Parts 956-999

Reserved.

Authority and Issuance

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 4511, 4512, 4513, and 4526, FHFA proposes to amend subchapters A, B, and F-M of chapter IX of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER A—[REMOVED AND RESERVED]

1. Remove and reserve subchapter A consisting of part 900.

SUBCHAPTER B—[REMOVED AND RESERVED]

2. Remove and reserve subchapter B consisting of part 906.

SUBCHAPTERS F-M [REMOVED]

3. Remove reserved subchapters F-M.

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

Dated: March 26, 2018.

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