

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1240**

**RIN 2590-AB16**

**Capital Planning and Stress Capital Buffer Determination**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking: Request for comments.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA or the Agency) is proposing to require the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac, and with Fannie Mae, each an Enterprise) to submit annual capital plans to the Agency and provide prior notice for certain capital actions (the proposal or proposed rule). The Agency is also incorporating the determination of the stress capital buffer into the capital planning process. The requirements in this proposal are consistent with the regulatory framework for capital planning for large bank holding companies.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AB16, by any one of the following methods:

- *Agency website:* [www.fhfa.gov/open-for-comment-or-input](http://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 e-mail to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590-AB16.

- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590-AB16, Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20219. Deliver the package at 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: Clinton Jones, General Counsel, Attention: Comments/RIN 2590-AB16, Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail 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:** Andrew Varrieur, Acting Senior Associate Director, Office of Capital Policy, (202) 649-3141, [Andrew.Varrieur@fhfa.gov](mailto:Andrew.Varrieur@fhfa.gov); Ron Sugarman, Principal Policy Analyst, Office of Capital Policy, (202) 649-3208, [Ron.Sugarman@fhfa.gov](mailto:Ron.Sugarman@fhfa.gov); or Mark Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649-3054, [Mark.Laponsky@fhfa.gov](mailto:Mark.Laponsky@fhfa.gov). These are not toll-free numbers. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

## **SUPPLEMENTARY INFORMATION:**

### **Comments**

FHFA invites comments on all aspects of the proposed rule. Copies of all comments will be posted without change and will include any personal information you provide, such as your name, address, email address, and telephone number, on the FHFA website at <https://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

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## **I. Background**

FHFA is proposing to require the Enterprises to submit annual capital plans to the Agency and provide prior notice for certain capital actions. The Agency is also incorporating the determination of the stress capital buffer from the final Enterprise Regulatory Capital Framework (ERCF) into the capital planning process. The requirements in this proposal are consistent with the regulatory framework for capital planning for large bank holding companies.

During the years leading up to the 2007 financial crisis, many financial institutions made significant distributions of capital, in the form of stock repurchases and dividends, without due consideration of the effects that a prolonged economic downturn could have on their capital adequacy and ability to continue to operate and remain credit intermediaries during times of economic and financial stress. In 2011, the Board of Governors of the Federal Reserve System (Board) first proposed amendments to Regulation Y (12 CFR 225.8) to require large banks to submit annual capital plans and to provide notice before making certain capital distributions.<sup>1</sup>

FHFA's proposal builds upon the Agency's existing supervisory expectation that the Enterprises should have robust systems and processes in place that incorporate forward-looking projections of revenue and losses to monitor and maintain their internal capital adequacy. In FHFA's opinion, the Enterprises generally should operate with

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<sup>1</sup> Originally, as a part of the capital plan rule, the Board could object to a firm's capital plan based on a qualitative assessment. However, amendments in 2019 changed this requirement such that after the 2020 Comprehensive Capital Analysis and Review (CCAR), no firm would be subject to a potential qualitative objection if the firm successfully passed several qualitative evaluations. All firms subject to the Board's capital plan rule have successfully passed the required number of qualitative evaluations such that no firms are subject to the qualitative objection going forward. In 2020, the Board's rule was amended to incorporate the stress capital buffer into the capital planning process. The Board made further updates to the rule in 2021, primarily to tailor the requirements based on risk.

capital positions well above the minimum regulatory capital ratios, with the amount of capital held commensurate with each Enterprise's risk profile. The Enterprises should have internal processes for assessing their capital adequacy that reflect a full understanding of their risks and ensure that they hold capital corresponding to those risks to maintain overall capital adequacy.

The board of directors and senior management of the Enterprises are ultimately responsible for overseeing an Enterprise's capital planning strategies and internal capital adequacy processes. The proposal does not diminish the responsibility of the Enterprise and its board of directors and senior management with respect to capital planning. Rather, the proposal is intended to: (i) establish minimum supervisory standards for such strategies and processes for the Enterprises; (ii) describe how the boards of directors and senior management of the Enterprises should communicate the strategies and processes, including any material changes to FHFA; and (iii) provide FHFA with an opportunity to review the Enterprises' planned capital distributions.

The proposal is also consistent with FHFA's practice of requiring company-run stress tests from each Enterprise. In 2014, the Agency began requiring its regulated entities to conduct stress tests pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). As amended by section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), the Dodd-Frank Act requires certain financial companies with total consolidated assets of more than \$250 billion, and which are regulated by a primary federal financial regulatory agency, to conduct periodic stress tests to determine whether the companies have

sufficient capital to absorb losses and support operations during adverse economic conditions.

Dodd-Frank Act stress testing (DFAST) is a forward-looking exercise that assesses the impact on capital levels that would result from immediate financial shocks and nine quarters of adverse economic conditions. FHFA requires Fannie Mae and Freddie Mac to submit the results of stress tests based on two scenarios: a baseline scenario and a severely adverse scenario. The Agency aligned its DFAST scenario variables and assumptions with those used by the Board for its stress testing of banks. The Agency's dates for the capital plan submission and initial notice of the stress capital buffer lag the timeline imposed by the Board by 45 days. This is due to differences in the timing of the implementation of the annual DFAST process for banks versus the Enterprises. FHFA provides the Enterprises with DFAST instructions and guidance with a 30-day lag after the Board issues instructions to the banks. The Enterprises also report DFAST results to FHFA with a 30-day lag compared to the banks reporting results to the Board. Under the proposal, the Enterprises would need to submit their capital plans to FHFA by May 20, the same date that the DFAST results are due to the Agency. FHFA and the Enterprises release DFAST results to the public between August 1 and August 15. By August 15, the Agency would also provide the Enterprises with initial notices of their stress capital buffers. The final stress capital buffers will be provided to the Enterprises on August 31 and they will be effective on October 1. These last two dates align with the banking timeline.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 establishes minimum leverage ratios for the Enterprises by statute and requires FHFA to

establish risk-based capital levels for an Enterprise by regulation. FHFA may also set higher leverage requirements by regulation. FHFA did both in the ERCF, published in the *Federal Register* on December 17, 2020 (85 FR 82198, 12 CFR part 1240).<sup>2</sup> FHFA may address an Enterprise's failure to meet a capital threshold that is required by statute or regulation through enforcement mechanisms. For example, pursuant to FHFA's Prompt Corrective Action and general enforcement authority, it may require an Enterprise to develop and implement a capital restoration plan, restrict asset growth or activities, and take other appropriate actions to remediate the violation of law.<sup>3</sup> The Agency may also use the enforcement tools available under its authority to prescribe and enforce prudential management and operations standards (PMOS).<sup>4</sup> The Enterprises are currently in conservatorship, are subject to the restrictions of the Senior Preferred Stock Purchase Agreements between them and the U.S. Treasury, and do not hold capital anywhere near the levels specified in the ERCF. The capital plans will allow the Enterprises to identify the amount of capital they need to raise to close the gap with the ERCF, and to consider the timing of when to raise capital, and what types of capital to raise. The provisions on capital distributions of this proposed rule, like those of the ERCF, are unlikely to be of practical effect soon. This proposed rule, like the ERCF, is intended to provide a stable regulatory framework for the Enterprises for an extended period, including after they achieve adequate capitalization under the ERCF.

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<sup>2</sup> FHFA subsequently proposed amendments to refine the prescribed leverage buffer amount and capital treatment of credit risk transfers, 86 FR 53230 (Sept. 27, 2021), and proposed a rule to introduce additional public disclosure requirements, 86 FR 60589 (Nov. 3, 2021).

<sup>3</sup> See 12 U.S.C. ch. 46, subch. II (Prompt Corrective Action), & subch. III (general enforcement authority).

<sup>4</sup> See 12 U.S.C. 4513b. The ERCF is a prudential standard for purposes of that statutory section, 12 CFR 1240.1(e)(3).

## **II. Capital Plans**

### **A. Annual Capital Planning Requirement**

The proposal would require an Enterprise to develop and maintain a capital plan. For purposes of the proposal, a capital plan is defined as a written presentation of the Enterprise's capital planning strategies and capital adequacy processes that includes a set of mandatory elements.

An Enterprise must submit its complete capital plan to FHFA by May 20 of each calendar year, or such later date as directed by the Agency. The Enterprise's board of directors or a designated committee thereof must at least annually, review the robustness of the Enterprise's process for assessing capital adequacy, ensure that any deficiencies in the Enterprise's process for assessing capital adequacy are appropriately remediated, and approve the Enterprise's capital plan before it is submitted to the Agency.

### **B. Mandatory Elements of a Capital Plan**

A capital plan would be required to contain at least the following elements:

1. An assessment of the expected sources and uses of capital over the planning horizon that reflects the Enterprise's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions.

2. Estimates of projected revenues, expenses, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the Enterprise, over the planning horizon under a range of scenarios, including the Enterprise's Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios that FHFA may provide the Enterprise after giving notice to the Enterprise.



3. A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account.

4. A description of all planned capital actions over the planning horizon. Planned capital actions must be consistent with any effective capital distribution limitations established by FHFA by order or regulation. The Enterprise must also consider its regulatory capital buffers in planning capital actions.

5. A discussion of how the Enterprise will, under expected and stressful conditions, maintain capital commensurate with its risks, and maintain capital above the regulatory capital ratios.

6. A discussion of how the Enterprise will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary.

7. The Enterprise's capital policy (defined below).

8. A discussion of any expected changes to the Enterprise's business plan that are likely to have a material impact on the Enterprise's capital adequacy or liquidity.

These proposed mandatory elements of a capital plan are consistent with FHFA's existing supervisory practice with respect to the information that it expects the Enterprises to include in a capital plan for internal planning purposes.

For purposes of the proposal, a capital action would be defined as any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that FHFA determines could impact an Enterprise's consolidated capital.

A capital distribution would be defined as a redemption or repurchase of any debt

or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that FHFA determines to be in substance a distribution of capital.

Capital policy would be defined as the written principles and guidelines used for capital planning, issuance, usage and distributions, including internal capital goals, quantitative or qualitative guidelines for distributions, strategies for addressing shortfalls and internal governance.

Internal baseline scenario would be defined as a scenario that reflects the Enterprise's expectation of the economic and financial outlook. Internal stress scenario would be defined as a scenario designed by an Enterprise that stresses the specific vulnerabilities of the Enterprise's risk profile and operations. Both scenarios would also include expectations related to the Enterprise's capital adequacy and financial condition.

The planning horizon would be defined as at least nine consecutive quarters for the FHFA scenarios, consistent with DFAST, and at least five years for the Internal scenarios, consistent with the Enterprise's corporate forecasts. FHFA's proposal differs from the banking framework, which has a nine-quarter horizon for both the regulator's scenarios and bank's Internal scenarios. The proposal's longer-term horizon for the Internal scenarios would better allow FHFA to assess each Enterprise's plan to rebuild capital to come into compliance with the ERCF.

An Enterprise must include pro forma estimates of its minimum regulatory capital ratios in its capital plan. If FHFA were to adopt additional or different minimum

regulatory capital ratios in the future, an Enterprise would be required to incorporate these minimum capital ratios into its capital plan as they come into effect and reflect them in its planning horizon.

In connection with its submission of a capital plan to FHFA, an Enterprise would be required to provide certain data to FHFA. To the greatest extent possible, the data templates, and any other data requests, would be designed to minimize the burden on the Enterprise and to avoid duplication. Upon the request of FHFA, an Enterprise must provide the Agency with information on its financial condition and capital, structure, amount and risk characteristics of on- and off-balance sheet exposures, risk management policies and procedures, liquidity profile, models used for stress scenario analysis, and any other relevant qualitative or quantitative information requested by the Agency to facilitate review of the Enterprise's capital plan.

### **C. FHFA Review of a Capital Plan**

The proposal provides that FHFA would consider the following factors in reviewing an Enterprise's capital plan:

1. The comprehensiveness of the capital plan, including the extent to which the underlying analysis addresses potential risks from activities across the Enterprise and the Enterprise's capital policy;
2. The reasonableness of the capital plan, assumptions and analysis underlying the capital plan and robustness of its capital adequacy process;
3. Relevant supervisory information about the Enterprise and its subsidiaries;
4. The Enterprise's regulatory and financial reports, and supporting data to allow for an analysis of the Enterprise's loss, revenue and reserve projections;

5. The results of any stress tests conducted by the Enterprise or FHFA; and
6. Other information required by FHFA or related to the Enterprise's capital adequacy.

**D. Resubmission of a Capital Plan**

1. Under the proposal, an Enterprise would be required to update and resubmit its capital plan to FHFA within 30 days if the Enterprise determines there has been or will be a material change in the Enterprise's risk profile, financial condition, or corporate structure since the last submitted plan to FHFA, or if the Agency directs the Enterprise in writing to revise and resubmit its plan, as necessary to monitor risks to capital adequacy, for reasons including, but not limited to: The capital plan is incomplete or the capital plan, or the Enterprise's internal capital adequacy processes, contains material weaknesses;

2. There has been or will likely be a material change in the Enterprise's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

3. The Internal stress scenario(s) in the capital plan are not appropriate for the Enterprise's business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on an Enterprise's risk profile and financial condition require the use of updated scenarios.

FHFA may extend the 30-day resubmission period for up to an additional 60 days, or such longer period as the Agency determines appropriate.

If a capital plan is resubmitted by an Enterprise, FHFA will provide notice within 75 days, unless extended, on whether it will recalculate the stress capital buffer. Unless

otherwise determined by FHFA, the Agency will provide notice to the Enterprise of the new buffer within 90 days of its decision to recalculate the buffer.

### **III. Approval Requirements for Certain Capital Actions and Post Notice Requirement**

An Enterprise must receive prior approval from FHFA before making a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after an event requiring the resubmission of a capital plan.

In making a request for a capital distribution under this part of the proposal, the Enterprise must discuss any changes to the capital plan since it was last submitted to FHFA, provide the purpose of the transaction, and a description of the proposed capital distribution. The Agency may request additional information, which may include an assessment of the Enterprise's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data.

FHFA will act on requests for prior approval within 30 days of receiving all the required information. If the transaction is not approved, the Agency will notify the Enterprise of the reasons for its decision, and the Enterprise will have 15 days to submit a request for a hearing. If after considering the request FHFA decides to grant a hearing, it will be held within 30 days of FHFA's receipt of the request for a hearing. The Agency will give written notice to the Enterprise of its decision within 60 days of the conclusion of the hearing. FHFA may decide to extend the periods for the hearing and for rendering its decision.

An Enterprise must notify FHFA within 15 days of making a capital distribution if it was approved under a request for prior approval (when a plan needs to be resubmitted), or if the distribution will exceed the dollar amount of the Enterprise's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

#### **IV. Stress Capital Buffer**

##### **A. Determination of the Stress Capital Buffer**

The proposal incorporates the stress capital buffer from the ERCF into the capital planning process. The buffer is determined by FHFA, and the calculation is based on the results of a supervisory stress test, subject to a floor of 0.75 percent of the Enterprise's adjusted total assets as of the last day of the previous calendar quarter. However, until such time as the Agency develops its supervisory stress test, or in any year that FHFA does not determine the stress capital buffer, the buffer is equal to 0.75 percent of an Enterprise's adjusted total assets, as of the last day of the previous calendar quarter. The proposal has changed the calculation method slightly by considering an Enterprise's planned common stock dividends for the fourth through seventh quarters of the planning horizon rather than the ERCF direction to use each of the nine quarters of the planning horizon. This change is consistent with the Board's recent amendments to the banking rule, which uses four quarters of planned common stock dividends.

FHFA will provide the Enterprise with notice of its stress capital buffer and explanation of the results of the supervisory stress test by August 15 of each year, unless otherwise determined by the Agency. Within two business days of receiving its stress capital buffer, an Enterprise must adjust its planned capital distributions for the fourth

through seventh quarters of the planning horizon to be consistent with effective capital distribution limitations assuming the stress capital buffer provided by the Agency, in place of any stress capital buffer currently in effect.

An Enterprise may request reconsideration of its stress capital buffer by submitting a written request within 15 days of receipt of its buffer from FHFA. The Enterprise may also request an informal hearing. The hearing, if granted by the Agency, will take place within 30 days of FHFA's receipt of the request for a hearing. FHFA will provide its decision within 30 days of receiving the written reconsideration request or within 30 days of the conclusion of the hearing. The time period for the hearing and for providing the decision may be extended by the Agency.

If the Enterprise does not request reconsideration, FHFA will provide the Enterprise with its final stress capital buffer by August 31 and the buffer will be effective on October 1, unless otherwise determined by the Agency.

## **B. Conforming Amendments to the ERCF**

Since the proposal incorporates the stress capital buffer into the capital planning process, it is necessary for FHFA to make conforming amendments to the ERCF. The stress capital buffer determination in the ERCF would be replaced with a reference to the determination of the buffer in the capital planning rule. The stress capital buffer would remain as a component of the capital conservation buffer in the ERCF.

FHFA solicits comments on all aspects of the proposal.

## **V. Regulatory Analyses**

### **A. 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. FHFA need not undertake such an analysis if FHFA has certified that the regulation will not have a significant economic impact on a substantial number of small entities. FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. FHFA certifies that the proposed rule, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

**B. Paperwork Reduction Act**

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The proposed rule contains no such collection of information requiring OMB approval under the PRA. Therefore, no information has been submitted to OMB for review.

**List of Subjects in 12 CFR Part 1240**

Capital, Credit, Enterprise, Investments, Reporting and recordkeeping requirements.

**Authority and Issuance**

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4513b, 4514, 4515-17, 4526, 4611-12, 4631-36, FHFA proposes to amend part 1240 of title 12 of the Code of Federal Regulations as follows:

**CHAPTER XII—Federal Housing Finance Agency**

**Subchapter C—Enterprises**



## **PART 1240—CAPITAL ADEQUACY OF ENTERPRISES**

1. The authority citation for part 1240 is revised to read as follows:

**Authority:** 12 U.S.C. 4511, 4513, 4513b, 4514, 4515, 4517, 4526, 4611-12, 4631-36.

2. Amend § 1240.11 by revising paragraph (a)(7) to read as follows:

### **§ 1240.11 Capital conservation buffer and leverage buffer.**

- (a) \* \* \*

(7) *Stress capital buffer.* (i) The stress capital buffer for an Enterprise is the stress capital buffer determined under § 1240.500 except as provided in paragraph (a)(7)(ii) of this section.

(ii) If an Enterprise has not yet received a stress capital buffer requirement, its stress capital buffer for purposes of this part is 0.75 percent of the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter.

3. Add subpart H to read as follows:

### **Subpart H—Capital Planning and Stress Capital Buffer Determination**

#### **§ 1240.500 Capital planning and stress capital buffer determination.**

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by the Enterprises. This section also establishes FHFA's process for determining the stress capital buffer applicable to the Enterprises.

(b) *Scope and reservation of authority—(1) Applicability.* This section applies to the Enterprises.

- (2) *Reservation of authority.* Nothing in this section shall limit the authority

of FHFA to issue or enforce a capital directive or take any other supervisory or enforcement action, including an action to address unsafe or unsound practices or conditions or violations of law.

(c) *Definitions.* For purposes of this section, the following definitions apply:

*Adjusted total assets* has the same meaning as under subpart A of this part.

*Advanced approaches* means the risk-weighted assets calculation methodologies as set forth in subpart E of this part.

*Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that FHFA determines could impact an Enterprise's consolidated capital.

*Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that FHFA determines to be in substance a distribution of capital.

*Capital plan* means a written presentation of an Enterprise's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (d)(2) of this section.

*Capital plan cycle* means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

*Capital policy* means an Enterprise's written principles and guidelines used for capital planning, capital issuance, capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the

strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

*Common equity tier 1 capital* has the same meaning as under subpart C of this part.

*Effective capital distribution limitations* means any limitations on capital distributions established by FHFA by order or regulation, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in subpart D of this part.

*Final planned capital distributions* means the planned capital distributions included in a capital plan that include the adjustments made pursuant to paragraph (g) of this section, if any.

*Internal baseline scenario* means a scenario that reflects the Enterprise's expectation of the economic and financial outlook, including expectations related to the Enterprise's capital adequacy and financial condition.

*Internal stress scenario* means a scenario designed by an Enterprise that stresses the specific vulnerabilities of the Enterprise's risk profile and operations, including those related to the Enterprise's capital adequacy and financial condition.

*Planning horizon* means the period of at least nine consecutive quarters for the FHFA scenarios and at least five years for the Internal scenarios, beginning with the quarter preceding the quarter in which the Enterprise submits its capital plan, over which the relevant projections extend, unless otherwise directed by FHFA.

*Regulatory capital ratio* means a capital ratio for which FHFA has established minimum requirements for the Enterprise by regulation or order, including, as applicable,

the Enterprise's regulatory capital ratios calculated under subpart B of this part; except that the Enterprise shall not use the advanced approaches to calculate its regulatory capital ratios.

*Severely adverse scenario* has the same meaning as under 12 CFR Part 1238.

*Stability capital buffer* has the same meaning as under subpart G of this part.

*Stress capital buffer* means the amount calculated under paragraph (e) of this section.

*Supervisory stress test* means a stress test conducted by FHFA using a severely adverse scenario and the assumptions contained in 12 CFR Part 1238.

- (d) *Capital planning requirements and procedures*—(1)*Annual capital planning.* (i) An Enterprise must develop and maintain a capital plan.
- (ii) An Enterprise must submit its complete capital plan to FHFA by May 20 of each calendar year, or such later date as directed by FHFA.
- (iii) The Enterprise's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (d)(1)(ii) of this section:
- (A) Review the robustness of the Enterprise's process for assessing capital adequacy;
- (B) Ensure that any deficiencies in the Enterprise's process for assessing capital adequacy are appropriately remedied; and
- (C) Approve the Enterprise's capital plan.
- (2) *Mandatory elements of capital plan.* A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the Enterprise's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, expenses, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the Enterprise, over the planning horizon under a range of scenarios, including the Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios that FHFA may provide the Enterprise after giving notice to the Enterprise;

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon. Planned capital actions must be consistent with any effective capital distribution limitations, except as may be adjusted pursuant to paragraph (g) of this section. In determining whether an Enterprise's planned capital distributions are consistent with effective capital distribution limitations, an Enterprise must assume that:

(1) Any countercyclical capital buffer amount currently applicable to the Enterprise remains at the same level, except that the Enterprise must reflect any increases or decreases in the countercyclical capital buffer amount that have been announced by FHFA at the times indicated by FHFA's announcement for when such increases or decreases will take effect; and

(2) Any stability capital buffer currently applicable to the Enterprise when the capital plan is submitted remains at the same level, except that the Enterprise must reflect

any increase in its stability capital buffer pursuant to § 1240.400(c)(1), beginning in the fifth quarter of the planning horizon.

(ii) A detailed description of the Enterprise's process for assessing capital adequacy, including:

(A) A discussion of how the Enterprise will, under expected and stressful conditions, maintain capital commensurate with its risks, and maintain capital above the regulatory capital ratios;

(B) A discussion of how the Enterprise will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The Enterprise's capital policy; and

(iv) A discussion of any expected changes to the Enterprise's business plan that are likely to have a material impact on the Enterprise's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of FHFA, the Enterprise shall provide FHFA with information regarding:

(i) The Enterprise's financial condition, including its capital;

(ii) The Enterprise's structure;

(iii) Amount and risk characteristics of the Enterprise's on- and off-balance sheet exposures, including exposures within the Enterprise's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The Enterprise's relevant policies and procedures, including risk management policies and procedures;

(v) The Enterprise's liquidity profile and management;

(vi) The loss, revenue, and expense estimation models used by the Enterprise for stress scenario analysis, including supporting documentation regarding each model's development and validation; and

(vii) Any other relevant qualitative or quantitative information requested by FHFA to facilitate review of the Enterprise's capital plan under this section.

(4) *Resubmission of a capital plan.* (i) An Enterprise must update and resubmit its capital plan to FHFA within 30 calendar days of the occurrence of one of the following events:

(A) The Enterprise determines there has been or will be a material change in the Enterprise's risk profile, financial condition, or corporate structure since the Enterprise last submitted the capital plan to FHFA; or

(B) FHFA instructs the Enterprise in writing to revise and resubmit its capital plan, as necessary to monitor risks to capital adequacy, for reasons including, but not limited to:

(1) The capital plan is incomplete or the capital plan, or the Enterprise's internal capital adequacy process, contains material weaknesses;

(2) There has been, or will likely be, a material change in the Enterprise's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(3) The Internal stress scenario(s) are not appropriate for the Enterprise's

business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on an Enterprise's risk profile and financial condition require the use of updated scenarios; or

(ii) FHFA may extend the 30-day period in paragraph (d)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as FHFA determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, an Enterprise may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(5) *Confidential treatment of information submitted.* The confidentiality of information submitted to FHFA under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and FHFA's rule on the Availability of Non-Public Information (12 CFR part 1214).

(e) *Calculation of the stress capital buffer—(1) General.* FHFA will determine the stress capital buffer that applies under § 1240.11 pursuant to this paragraph (e). FHFA will calculate the Enterprise's stress capital buffer requirement annually.

(2) *Stress capital buffer calculation.* An Enterprise's stress capital buffer is equal to the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter, multiplied by the greater of:

(i) The following calculation:

(A) The ratio of an Enterprise's common equity tier 1 capital to adjusted total



assets, as of the final quarter of the previous capital plan cycle, unless otherwise determined by FHFA; minus

(B) The lowest projected ratio of the Enterprise's common equity tier 1 capital to adjusted total assets, in any quarter of the planning horizon under a supervisory stress test; plus

(C) The ratio of:

(1) The sum of the Enterprise's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon; to

(2) The adjusted total assets of the Enterprise in the quarter in which the Enterprise had its lowest projected ratio of common equity tier 1 capital to adjusted total assets, in any quarter of the planning horizon under a supervisory stress test; and

(ii) 0.75 percent.

(3) *Recalculation of stress capital buffer.* If an Enterprise resubmits its capital plan pursuant to paragraph (d)(4) of this section, FHFA may recalculate the Enterprise's stress capital buffer. FHFA will provide notice of whether the Enterprise's stress capital buffer will be recalculated within 75 calendar days after the date on which the capital plan is resubmitted, unless FHFA provides notice to the Enterprise that it is extending the time period.

(f) *Review of capital plans by FHFA.* FHFA will consider the following factors in reviewing an Enterprise's capital plan:

(1) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming

from activities across the Enterprise and the Enterprise's capital policy;

(2) The reasonableness of the Enterprise's capital plan, the assumptions and analysis underlying the capital plan, and the robustness of its capital adequacy process;

(3) Relevant supervisory information about the Enterprise and its subsidiaries;

(4) The Enterprise's regulatory and financial reports, as well as supporting data that would allow for an analysis of the Enterprise's loss, revenue, and reserve projections;

(5) The results of any stress tests conducted by the Enterprise or FHFA; and

(6) Other information requested or required by FHFA, as well as any other information relevant, or related, to the Enterprise's capital adequacy.

(g) *FHFA notice of stress capital buffer; final planned capital distributions—*

(1) *Notice.* FHFA will provide an Enterprise with notice of its stress capital buffer and an explanation of the results of the supervisory stress test. Unless otherwise determined by FHFA, notice will be provided by August 15 of the calendar year in which the capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section or within 90 calendar days of receiving notice that FHFA will recalculate the Enterprise's stress capital buffer pursuant to paragraph (e)(3) of this section.

(2) *Response to notice—(i) Request for reconsideration of stress capital buffer.* An Enterprise may request reconsideration of a stress capital buffer provided under paragraph (g)(1) of this section. To request reconsideration of a stress capital buffer, an Enterprise must submit to FHFA a request pursuant to paragraph (h) of this section.

(ii) *Adjustments to planned capital distributions.* Within two business days of

receipt of notice of a stress capital buffer under paragraph (g)(1) or (h)(5) of this section, as applicable, an Enterprise must:

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect; and

(1) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would not be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect, the Enterprise must adjust its planned capital distributions such that its planned capital distributions would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect; or

(2) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect, the Enterprise may adjust its planned capital distributions. An Enterprise may not adjust its planned capital distributions to be inconsistent with the effective capital distribution limitations assuming the stress capital buffer provided by

FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable; and

(B) Notify FHFA of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario.

(3) *Final planned capital distributions.* FHFA will consider the planned capital distributions, including any adjustments made pursuant to paragraph (g)(2)(ii) of this section, to be the Enterprise's final planned capital distributions on the later of:

(i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and

(ii) The expiration of the time for adjusting planned capital distributions pursuant to paragraph (g)(2)(ii) of this section.

(4) *Effective date of final stress capital buffer.* (i) FHFA will provide an Enterprise with its final stress capital buffer and confirmation of the Enterprise's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section, unless otherwise determined by FHFA. A stress capital buffer will not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration made pursuant to paragraph (h) of this section or before the time for requesting reconsideration has expired.

(ii) Unless otherwise determined by FHFA, an Enterprise's final planned capital distributions and final stress capital buffer shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5) *Publication.* With respect to an Enterprise subject to this section, FHFA may disclose publicly any or all of the following:

(i) The stress capital buffer provided to an Enterprise under paragraph (g)(1) or (h)(5) of this section;

(ii) Adjustments made pursuant to paragraph (g)(2)(ii) of this section;

(iii) A summary of the results of the supervisory stress test; and

(iv) Other information.

(h) *Administrative remedies; request for reconsideration.* The following requirements and procedures apply to any request under this paragraph (h):

(1) *General.* To request reconsideration of a stress capital buffer, provided under paragraph (g) of this section, an Enterprise must submit a written request for reconsideration.

(2) *Timing of request.* A request for reconsideration of a stress capital buffer, provided under paragraph (g) of this section, must be received within 15 calendar days of receipt of a notice of an Enterprise's stress capital buffer.

(3) *Contents of request.* (i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted (that is, why a stress capital buffer should be reconsidered). With respect to any information that was not previously provided to FHFA in the Enterprise's capital plan, the request should include an explanation of why the information should be considered.

(ii) A request for reconsideration may include a request for an informal hearing on the Enterprise's request for reconsideration.

(4) *Hearing.* (i) FHFA may, in its sole discretion, order an informal hearing if FHFA finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that FHFA may extend this period upon notice to the requesting party.

(5) *Response to request.* Within 30 calendar days of receipt of the Enterprise's request for reconsideration of its stress capital buffer submitted under paragraph (h)(2) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (h)(4) of this section, FHFA will notify the Enterprise of its decision to affirm or modify the Enterprise's stress capital buffer, provided that FHFA may extend this period upon notice to the Enterprise.

(6) *Distributions during the pendency of a request for reconsideration.* During the pendency of FHFA's decision under paragraph (h)(5) of this section, the Enterprise may make capital distributions that are consistent with effective distribution limitations, unless prior approval is required under paragraph (i)(1) of this section.

(i) *Approval requirements for certain capital actions—(1) Circumstances requiring approval—Resubmission of a capital plan.* Unless it receives prior approval pursuant to paragraph (i)(3) of this section, an Enterprise may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (d)(4)(i)(A) or (B) of this section.

(2) *Contents of request.* A request for a capital distribution under this section

must contain the following information:

(i) The Enterprise's capital plan or a discussion of changes to the Enterprise's capital plan since it was last submitted to FHFA;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by FHFA (which may include, among other things, an assessment of the Enterprise's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3) *Approval of certain capital distributions.* (i) FHFA will act on a request for prior approval of a capital distribution within 30 calendar days after the receipt of all the information required under paragraph (i)(2) of this section.

(ii) In acting on a request for prior approval of a capital distribution, FHFA will apply the considerations and principles in paragraph (f) of this section, as appropriate. In addition, FHFA may disapprove the transaction if the Enterprise does not provide all of the information required to be submitted under paragraph (i)(2) of this section.

(4) *Disapproval and hearing.* (i) FHFA will notify the Enterprise in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by FHFA, the Enterprise may submit a written request for a hearing.

(ii) FHFA may, in its sole discretion, order an informal hearing if FHFA finds

that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that FHFA may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of FHFA shall be given to the Enterprise within 60 calendar days of the conclusion of any informal hearing ordered by FHFA, provided that FHFA may extend this period upon notice to the requesting party.

(iv) While FHFA’s decision is pending and until such time as FHFA approves the capital distribution at issue, the Enterprise may not make such capital distribution.

(j) *Post notice requirement.* An Enterprise must notify FHFA within 15 days of making a capital distribution if:

(1) The capital distribution was approved pursuant to paragraph (i)(3) of this section; or

(2) The dollar amount of the capital distribution will exceed the dollar amount of the Enterprise’s final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

\_\_\_\_\_/s/\_\_\_\_\_  
 Sandra L. Thompson,  
*Acting Director, Federal Housing Finance Agency.*

December 16, 2021