

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1240

RIN 2590-AB16

Capital Planning and Stress Capital Buffer Determination

AGENCY: Federal Housing Finance Agency.

ACTION: Final Rule.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is adopting a final rule (final rule) that supplements the FHFA Enterprise Regulatory Capital Framework (ERCF) rule by requiring 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 FHFA and provide prior notice for certain capital actions. The final rule incorporates the stress capital buffer determination from the ERCF into the capital planning process. The requirements in the final rule are consistent with the regulatory framework for capital planning for large bank holding companies.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

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I. Introduction

On December 27, 2021, FHFA published in the **Federal Register** a notice of proposed rulemaking (the proposal or proposed rule) seeking comments on FHFA's proposal to require each Enterprise to submit annual capital plans to FHFA and provide prior notice for certain capital actions. The proposal incorporated the determination of the stress capital buffer from the ERCF¹ into the capital planning process. The requirements in the proposal were consistent with the regulatory framework for capital planning for large bank holding companies. FHFA is now adopting this final rule as proposed.

¹ 86 FR 73187 (Dec. 27, 2021).

The final rule's requirement to develop capital plans will allow the Enterprises to identify the amount of capital they need to raise to meet the ERCF's requirements, and to consider the timing of when to raise capital, and what types of capital to raise. The final 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.

II. Overview of the Final Rule

After carefully considering the comments on the proposed rule, and as described in this preamble, FHFA is adopting the capital planning requirements and stress capital buffer determination as proposed. FHFA continues to believe 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. Furthermore, each Enterprise should operate with an amount of capital that is commensurate with each Enterprise's risk profile. FHFA also believes that the stress capital buffer determination should be part of the capital planning process.

Specifically, the final rule will require an Enterprise to develop and maintain a capital plan, which the Enterprise must generally submit to FHFA by May 20 of each year, after it has been reviewed by the Enterprise's board of directors or a designated committee thereof. The plan must contain certain mandatory elements, including an assessment of the expected sources and uses of capital over a planning horizon that reflects the Enterprise's size and complexity, assuming both expected and stressful conditions. This includes the Enterprise's internal baseline scenario and internal stress scenario, as well as additional scenarios that may be provided by FHFA. The planning

horizon is at least five years for the Enterprise's scenarios and at least nine consecutive quarters for the FHFA scenarios. The capital plans also must include any planned capital actions and consider the regulatory capital buffers.

The final rule includes the factors that FHFA will consider in reviewing a plan, including its comprehensiveness and reasonableness given the assumptions and analysis underlying the plan and the robustness of the Enterprise's capital adequacy process. A plan must be resubmitted if there is a material change in the Enterprise's risk profile, financial condition, or corporate structure. FHFA also may require an Enterprise to resubmit its capital plan if the plan is incomplete or FHFA determines resubmission is necessary to monitor risks to capital adequacy. In general, an Enterprise must receive prior approval from FHFA to make a capital distribution, if the distribution would occur after an event that requires a resubmission. There is also a post-notice requirement for certain capital distributions.

In addition to requiring a capital plan, the rule incorporates the stress capital buffer from the ERCF into the capital planning process and makes the necessary conforming amendments to the ERCF. After FHFA notifies the Enterprise of its stress capital buffer each year, the Enterprise must adjust its planned capital distributions to be consistent with the capital distribution limitations effective under the new stress capital buffer. The final rule changes the stress capital buffer's 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.

III. General Comments on the Proposed Rule

FHFA received public comment letters on the proposed rule from a total of 12 different commenters. These commenters represented a variety of interested parties including one Enterprise (Freddie Mac), two trade associations, one corporation, and eight private individuals.² Three of the private individuals submitted multiple comment letters each, resulting in FHFA receiving a total of 21 comment letters on the proposed rule.

Freddie Mac was very supportive of the capital planning and stress capital buffer processes that would be required by the proposal but offered specific suggestions for modifying the stress capital buffer determination, the board duty provisions, and the compliance date for submission of the capital plans in the rule.

Of the 20 other letters, 19 were on conservatorship issues, while one expressed concern about FHFA's Duty to Serve program that was unrelated to capital planning or the stress capital buffer. Some of the conservatorship related letters dealt with the U.S. Department of the Treasury's (Treasury) investment in the Enterprises through the Preferred Stock Purchase Agreements and common stock warrants, prospect of future exits from the conservatorships, and how that may affect capital planning. Other letters dealt with aspects of the conservatorships that were unrelated to capital planning or the stress capital buffer. Most of the conservatorship letters were from private individuals and some of these individuals mentioned they were Enterprise shareholders. One conservatorship letter was from a trade association and one was from a corporation. The trade association commenter, while offering general support for the proposal's objective of making certain the Enterprises are operating with capital positions that reflect their risk

² See comments on Capital Planning and Stress Capital Buffer Determination Proposed Rule, available at <https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Comment-List.aspx?RuleID=714>. The comment period for the proposed rule closed on February 25, 2022.

profile, also expressed concern about Treasury's investment and desired clarity about exits from the conservatorships. The corporation commenter was similarly concerned about Treasury's investment as an impediment to raising capital.

FHFA has determined not to make changes to the rule in response to the comments on the Duty to Serve program or conservatorship issues. As FHFA stated in the preamble to its proposal, the rule is a framework for ongoing capital planning consistent with the regulatory requirements for large banks. The final 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.

FHFA did not receive any comments regarding the mandatory elements of a capital plan, FHFA's review of a capital plan, an Enterprise's potential resubmission of a capital plan, FHFA's approval requirements for certain capital actions, or post notice requirements. FHFA is adopting those portions of the rule as proposed.

Freddie Mac's comments on the stress capital buffer, board's duties, and compliance date are discussed below:

A. Stress Capital Buffer

The proposal included a minor change to the stress capital buffer calculation compared to the finalized ERCF to align with a recent amendment to the regulatory banking framework. In addition, the proposal incorporated the stress capital buffer from the ERCF into the capital planning process.

Under both the ERCF and proposal, the buffer would be determined by FHFA, with the calculation 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 FHFA develops its supervisory stress test, or in any year that FHFA does not determine the stress capital buffer, the buffer would be equal to 0.75 percent of an Enterprise's adjusted total assets.

Consistent with recent amendments to the Federal Reserve Board's banking rule, the proposal's calculation method prefunds an Enterprise's planned common stock dividends for the fourth through seventh quarters of the planning horizon rather than using the existing ERCF instruction to use each of the nine quarters of the planning horizon,

The proposal incorporated the stress capital buffer into the capital planning process by requiring an Enterprise, within two business days of receiving its stress capital buffer from FHFA, to 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 FHFA, in place of any stress capital buffer currently in effect.

Freddie Mac proposed to eliminate the 0.75 percent floor, supervisory stress test, and inclusion of planned dividends in the stress capital buffer calculation. Freddie Mac preferred to use capital depletion in Freddie Mac's Dodd-Frank Act Stress Test (DFAST) instead of a new supervisory stress test to be developed by FHFA. Freddie Mac proposed to apply the severely adverse scenario without a deferred tax asset write off or prefunding common stock dividends, holding the balance sheet constant over the stress horizon, and observing the quarter with the largest cumulative losses, all without applying the 0.75 percent floor.

Freddie Mac said the floor of 0.75 percent of adjusted total assets is inappropriate

for the Enterprises. Freddie Mac stated that for banks, the static floor was intended to address concerns that larger institutions could use a dynamic stress capital buffer based on stress testing to lower their capital requirements relative to smaller peers. However, they noted the Enterprises do not have a subset of smaller competitors. They said the Federal Reserve Board noted in its rule that about half of the bank population would be above the floor making the buffer risk sensitive. Freddie Mac believes their buffer would be below the floor, blunting risk sensitivity and increasing risk-taking if they managed toward the floor.

Freddie Mac also proposed to remove the add-on for planned common stock dividends for the fourth through seventh quarters, given that they are not forecasted to pay dividends in the near term due to their current capital position.

Consistent with the banking approach, FHFA believes that the development of a supervisory stress test is important for the stress capital buffer determination, and preferable to reliance on the Enterprise's DFAST model. The 0.75 percent buffer floor and consideration of common stock dividends already were a part of the ERCF as published by FHFA on December 17, 2020. FHFA's only change from the ERCF regarding common stock dividends was a reduction from using the full nine quarter stress horizon to using four quarters to be consistent with the banking framework. While the Enterprises are not currently able to pay dividends, it is important to keep the dividend provision forward looking since the Enterprises are working toward building capital to meet the standards in the ERCF. Therefore, FHFA is keeping the stress capital buffer determination unchanged in the final rule.

B. Board Duties

Freddie Mac asked that FHFA clarify the role of its board of directors in the final rule. The proposed rule stated that the Enterprise's board of directors, or a designated committee thereof, must at least annually and prior to submission of the capital plan: 1) review the robustness of the Enterprise's process for assessing capital adequacy; 2) ensure that any deficiencies in the Enterprise's process for assessing capital adequacy are appropriately remedied; and 3) approve the Enterprise's capital plan. The Enterprise wanted the term "ensure" changed to "oversee" or "review" since the board plays an oversight role. FHFA believes that while an Enterprise's management is responsible for remedying any deficiencies in the process for assessing capital adequacy, the board, as part of its oversight role, is ultimately responsible for ensuring that it gets done. FHFA's language on the board's duties is also consistent with the banking framework. Therefore, FHFA is keeping the language on the board's duties unchanged in the final rule.

C. Compliance Date

Freddie Mac asked FHFA to clarify that the annual May 20 capital plan submission dates will start in 2023, in the event that the final rule becomes effective before May 20, 2022, so that they will have sufficient time to prepare their first plan submission. FHFA agrees that the first plan submission under the final rule will be May 20, 2023. Given the final rule's publication date and effective date, no changes are necessary to the rule.

IV. 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 final rule contains no such collection of

information requiring OMB approval under the PRA. Therefore, no information has been submitted to OMB for review.

V. 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 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 rule under the Regulatory Flexibility Act and FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the final rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

VI. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects for 12 CFR Part 1240

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

Authority and Issuance

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 amends 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 continues to read as follows:

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

2. Revise § 1240.11(a)(7) 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:

(I) 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 in 12 CFR part 1214--Availability of Non-Public Information.

(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

