



NATIONAL  
ARCHIVES

May 8, 2017

Alfred M. Pollard  
General Counsel  
Attention: Comments/RIN 2590-AA86  
Federal Housing Finance Agency  
400 Seventh Street, SW Eighth Floor  
Washington, DC 20219  
[RegComments@fhfa.gov](mailto:RegComments@fhfa.gov)

*Submitted to the Federal eRulemaking Portal and via e-mail to [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) as per instructions in the Federal Register, Vol. 82, No. 49/Wednesday, March 15, 2017/Rules and Regulations*

**RE: The Federal Housing Finance Agency interim final rule with request for comments, 12 CFR Part 1202, RIN 2590-AA86**

We offer the following comments from the National Archives and Records Administration regarding the Federal Housing Finance Agency (FHFA) interim final FOIA rule with request for comments, 12 CFR Part 1202, RIN 2590-AA86.

We appreciate the FHFA's clear references to the National Archives and Records Administration's (NARA's) Federal records centers in the rule, but suggest adding the words "Federal records center" or "records center" to the NARA reference in the definition of "Direct costs." NARA handles two kinds of records that originate with other agencies – accessioned, permanent holdings that have transferred to NARA's legal custody, and records we store for agencies in records centers and that still belong to the other agencies. Often, people are confused about these two kinds of records when they see general references to documents at the National Archives, so adding the records center portion would help clarify for readers.

In addition to the above comment, we offer the following comments on behalf of NARA's Office of Government Information Services (OGIS).

NATIONAL ARCHIVES *and*  
RECORDS ADMINISTRATION

8601 ADELPHI ROAD  
COLLEGE PARK, MD 20740-6001

[www.archives.gov](http://www.archives.gov)

We commend the Federal Housing Finance Agency (FHFA) for updating its FOIA policies and procedures to make them consistent with the Freedom of Information Act (FOIA) Improvement Act of 2016.

OGIS, created by Congress in the OPEN Government Act of 2007, has the statutory mandate under the Freedom of Information Act (FOIA) to offer mediation services to resolve disputes between FOIA requesters and agencies, review agency FOIA policies, procedures, and compliance, and identify procedures and methods for improving FOIA compliance. As part of our compliance mission, we comment on proposed new and updated agency FOIA regulations and other notices related to FOIA. The FOIA Improvement Act of 2016 requires that agencies review and issue FOIA regulations to ensure consistency with the amended statute and that the regulations include procedures for engaging in dispute resolution through the FOIA Public Liaison and OGIS.

We have the following comments on **§ 1202.9 How do I appeal a response denying my FOIA request?** of the interim final rule:

Regarding subsection (g) *Additional resource*, we respectfully request that FHFA include in its regulation that, in cases of unusual circumstances in which ten additional working days are given for an agency to respond to a FOIA request and in cases of adverse determinations, the agency will alert requesters to the services offered by the agency FOIA Public Liaison and OGIS, as required by statute. The FOIA Improvement Act of 2016 specifically states that, in cases of adverse determinations, agencies shall notify requesters of the right of the person to appeal and “to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.” 5 U.S.C. § 552 (a)(6)(A)(i)(III)(aa). The statute also states that in cases of unusual circumstances in which 10 additional working days are given for an agency to respond, agencies must notify requesters of the right to seek dispute resolution services from the agency’s FOIA Public Liaison and OGIS. 5 U.S.C. § 552 (a)(6)(B)(ii).

We also request changing the description of OGIS services in § 1202.9(g) from “mediation services to resolve FOIA disputes” to “services to resolve FOIA disputes” (in other words, removing the word “mediation”). This helps to clarify for requesters that they may engage in

various types of dispute resolution approaches to resolve the dispute; many readers see “mediation services” and think it means the only option is formal mediation. OGIS is suggesting this change in other agency regulations as well.

And finally, we request changing the language of the final sentence of § 1202.9(g), which currently reads: “By providing this information [about OGIS], FHFA does not commit to refer disputes to OGIS or to defer to OGIS’ mediation decisions in particular cases.” Please know that we do not issue “mediation decisions.” We serve as a neutral party to help resolve disputes between FOIA requesters and agencies, and do not make determinations or dictate resolutions to disputes.

We suggest instead the following language, which comes directly from the Department of Justice’s Office of Information Policy Template for Agency FOIA Regulations (Section VIII(d)) <https://www.justice.gov/oip/template-agency-foia-regulations>:

*“Dispute resolution is a voluntary process. If an agency agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.”*

*Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road—OGIS  
College Park, MD 20740  
ogis.archives.gov  
E-mail: ogis@nara.gov  
Telephone: 202-741-5770 // Toll-free: 1-877-684-6448 // Facsimile: 202-741-5769*