



Fannie Mae®

June 5, 2018

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Constitution Center
Eighth Floor (OGC)
400 7th Street, SW
Washington, DC 20219

Re: Comments/RIN 2590-AA90

Dear Mr. Pollard,

Fannie Mae is pleased to submit these comments on the Federal Housing Finance Agency (“FHFA”) Proposed Rule on the Responsibilities of Boards of Directors, Corporate Practices, and Corporate Governance (the “Proposed Rule”). The Proposed Rule would amend existing regulation pertaining to the strategic business plans for all of FHFA’s regulated entities.

We support a regulatory requirement for a multi-year strategic business plan that is both approved and overseen by our Board of Directors. Such a plan is broadly consistent with our current practice. Importantly, we see three valuable goals of any effective strategic business plan. First, a strategic business plan should articulate at the highest level how we intend to achieve our Charter requirements and the risks associated with these high-level objectives. Second, the strategic business plan should provide clear direction to the management team on prioritizing major initiatives and resources, reflecting an updated view of market trends and potential regulatory changes. Third, the strategic business plan should create a means for management accountability to the Board of Directors with objectives and measurable goals, including budgetary ones.

While we support the direction and many elements of the Proposed Rule, the Proposed Rule as currently drafted could have unintended consequences and undermine our ability to execute on an appropriately crafted strategy. We are commenting on three issues:

- **Maintaining a balanced approach to high-level strategic guidance and supporting detail:** Consistent with best industry practices, a strategic business plan should focus on the broad direction for a company and major business commitments. However, subject to how the FHFA interprets language, there is some risk that requirements around “activities” and the approach to “address[ing] credit needs and market opportunities” in the Proposed Rule could lead to a strategic business plan becoming a detailed laundry list of current and proposed new activities and all associated risks. We recommend that any rule appropriately balance the need for high-level strategic direction with providing enough detail to ensure that management is accountable for its significant business activities. If the plan requires too much emphasis on operational detail, an unintended consequence is that management could become distracted from the core focus of the strategic business plan—the need to articulate clear strategic challenges and approaches.



Furthermore, the Proposed Rule requires “all new authorized activities” to be included in the plan. The implication of this language is that management could be required to wait until the approval of a new plan to execute on new activities. That could be as long as three years under the Proposed Rule, or one year under Fannie Mae’s current strategic planning process. We imagine that this was not the intent of the Proposed Rule, and we recommend amending that language to reflect that only major strategic adaptations are required to be in the strategic business plan.

- **Maintaining distinct roles for the Board and management:** The roles of management and the Board should remain distinct. Management should remain responsible for the day-to-day operations of the organization, and the Board should be responsible for the approval of the strategic direction and oversight of management’s execution of that plan. If overly detailed, strategic business plan requirements could bring the Board into decision-making over activities that are part of the day-to-day operations of the organization.

We see the potential for blurring roles throughout the Proposed Rule. For example, the Preamble to the Proposed Rule states, “The purpose of § 1239.14(a)(2) is similar to that currently in effect for the Banks, that is, to require regulated entity **board** [our emphasis] engagement with market research and stakeholder consultations to identify areas of credit needs and market opportunities to further the regulated entity’s public purposes.” In this area and others, management should have some flexibility in exercising its judgment on the appropriate activities to achieve strategic objectives, housing goals, duty to serve requirements, or other regulatory mandates. The Board should review and challenge the appropriateness of management actions, but not perform them directly.

- **Considering other tools available to FHFA as a regulator:** We recognize that much of the language that is being proposed reflects guidance being followed by the banking sector to ensure that new activities support safety and soundness. It is important to note that FHFA as regulator already has broad safety and soundness authority over all new and existing products and activities of the Enterprises. See 12 U.S.C. § 4541(f)(1). FHFA also has prior approval authority for new products proposed by the Enterprises—an authority it does not have with respect to the Federal Home Loan Banks. See 12 U.S.C. § 4541(a).

Specific Comments:

With these three points in mind, below we are proposing specific changes in language for the Proposed Rule. Our intention is to clarify the scope of the strategic business plan requirements in the Proposed Rule in two ways. The Proposed Rule should 1) support the strategic business plan remaining a forward-looking, strategic document that addresses significant *strategic* activities and key risks associated with those activities, and 2) strike the appropriate balance between the roles of the Board of Directors and management. In addition to these specific comments, FHFA may generally wish to consider a more principles-based approach for strategic business plan requirements.



Section 1239.14(a)(1)(ii)

Recommended Changes:

“[Specifically, each regulated entity’s strategic business plan shall at a minimum:] In the case of an Enterprise, articulate measurable ~~operating~~-goals and objectives for each strategic activity in the strategic business plan, which may be an significant existing activity or an ~~and for all~~ authorized new activities[.]”

Comment:

Permit business judgment and discretion to determine which activities are included in the strategic business plan

The proposed language in this section of the Proposed Rule would require inclusion of information that is both too broad, “all . . . activities,” and too day-to-day operational, “operating,” and may prevent management and the Board from using judgment regarding what activities are included in the strategic business plan, and the strategies used to achieve those goals.

We believe that clarifying that only “strategic” activities should be included in the strategic business plan would maintain an appropriate balance for the strategic business plan as a high-level corporate strategy document with sufficient detail to permit execution and ongoing Board oversight. The concept of “strategic” activities includes both existing and new activities, addressing the potentially competing use of both “significant” and “all” to describe what activities should be captured in the strategic business plan. As we noted, we are also concerned that without the modifier of “strategic” in front of new activities, the term “activities” is too broad and would require the inclusion of insignificant activities that are inappropriate for a strategy document. Our concern regarding the breadth of activities is especially heightened given the discussion in the commentary section of the Proposed Rule, which references the extremely broad definition of “new activity” in 12 CFR 1253.2. That definition sweeps in, with few exceptions, “any business line, business practice, or service, including guarantee, financial instrument, consulting, or marketing, that is proposed to be undertaken by the Enterprise either on a standalone basis or as an incident to providing one or more Enterprise products to the market.”

Our proposed revisions, including deleting “operating” and adding the modifier “strategic” before “activity,” shifts the focus back to forward-looking business strategies and their associated goals and objectives.

Section 1239.14(a)(2)

Recommended Changes:

“[Specifically, each regulated entity’s strategic business plan shall at a minimum:] Discuss how the regulated entity will address credit needs and market opportunities ~~identified through ongoing market research and stakeholder consultations~~[.]”

Comment:

Eliminate redundancy and clarify appropriate responsibility and use of market research and stakeholder feedback



We recommend deleting “identified through ongoing market research and stakeholder consultations” in Section 1239.14(a)(2) as it is unnecessary in light of Section 1239.14(a)(4), which requires the strategic business plans of both the Enterprises and the Federal Home Loan Banks to be supported by “appropriate and timely research and analysis of relevant market developments.” We also note that the requirement to address needs and opportunities identified by stakeholders could be interpreted to require that all stakeholder feedback be incorporated into the strategic business plan, which would not permit us judgment and discretion to incorporate only relevant market research and stakeholder feedback into the strategic business plan. In addition, the word “ongoing” could be interpreted to require continuous market research and stakeholder consultation by the Board, which in addition to requiring the Board to act as management, would require a significant time commitment from the Board. Finally, we are concerned that the Preamble for the Proposed Rule requires Board engagement in stakeholder consultations and market research, which shifts the role for the Board of Directors away from its oversight function.

Section 1239.14(a)(3)

Recommended Changes:

“[Specifically, each regulated entity’s strategic business plan shall at a minimum:] Describe any significant strategic activities in which the regulated entity is planning to be engaged, including any significant changes to business strategy or approach that the regulated entity is planning to undertake, and discuss how such strategic activities would further the regulated entity’s mission and public purposes[.]”

Comment:

Only “significant” and “strategic” activities should be addressed in the strategic business plan

As proposed, Section 1239.14(a)(3) requires each strategic business plan to describe only “significant” activities that the regulated entity plans to pursue. We appreciate this qualification and suggest additional clarification along the same lines to ensure that the regulated entities are not required to include insignificant, ordinary-course operating activities or immaterial changes in strategy or approach in their strategic business plans.

Section 1239.14(a)(4)(ii)

Recommended Changes:

“[Specifically, each regulated entity’s strategic business plan shall at a minimum:] In the case of an Enterprise, be supported by appropriate, no less frequent than annual, and timely research and analysis of relevant market developments[.]”

Comment:

Clarify that research should be conducted no less frequently than annually



We suggest replacing “timely” with “no less frequent than annual” to align with the “at least annually” review requirement in Section 1239.14(b)(1) and to provide greater clarity about the research cycle timing.

Section 1239.14(a)(5)

Recommended Changes:

“[Specifically, each regulated entity’s strategic business plan shall at a minimum:] Identify significant current and emerging risks, ~~including those~~ associated with the regulated entity’s ~~existing activities or new~~ strategic business plan activities, and discuss how the regulated entity plans to address emerging such risks ~~while furthering its public purposes and mission in a safe and sound manner[.]”~~

Comment:

*Clarify that a regulated entity must identify and address the **significant** risks associated with its strategic business plan activities*

As proposed, Section 1239.14(a)(5) could be read to require a regulated entity to identify *all* current and emerging risks, however remote or insignificant, and regardless of their association with the strategic activities described in the regulated entity’s strategic business plan.

Our suggested language tailors the discussion of risks to those that are significant and correlated to the strategic plan activities. We believe that the discussion in the strategic business plan document of current and emerging risks related to existing and new activities needs to be balanced and focused on risks that are significant. Importantly, we have an enterprise risk management function (consistent with the requirements of FHFA’s regulation on Responsibilities of Boards of Directors, Corporate Practices and Corporate Governance Matters, 12 CFR Part 1239, and Prudential Management and Operations Standards, 12 CFR Part 1236) that provides risk management oversight of all of our activities. This enterprise risk management function, consistent with these regulatory requirements, monitors and tracks risk associated with the Enterprise’s day-to-day operations, and regularly reports on these risk management activities at both the Board and management levels.

Eliminate redundancy

We recommend deleting “while furthering its public purposes and mission in a safe and sound manner” in Section 1239.14(a)(5) because we believe the concept is sufficiently addressed in Section 1239.14(a). Section 1239.14(a) requires the Enterprises to adopt a strategic business plan “that describes, at a minimum, how the business activities of the regulated entity will achieve its mission and public purposes consistent with its authorizing statute, [and] the Safety and Soundness Act....”

Additional Comment:

Exclude application of this Proposed Rule to activities already addressed by 12 CFR 1223.21(d) and (e)



FHFA's minority and women inclusion rule requires the board of directors of a regulated entity to adopt a diversity and inclusion ("D&I") strategic plan. See 12 CFR 1223.21(d). Further, the rule prescribes required content for a regulated entity's D&I strategic plan. See 12 CFR 1223.21(e). We believe that 12 CFR 1239.14 may create confusion for the regulated entities insofar as it includes different and potentially contradictory requirements for an Enterprise strategic business plan. Accordingly, we recommend carving out application of 12 CFR 1239.14 with respect to a regulated entity's D&I strategic plan, which we believe should continue to be governed by the requirements of 12 CFR 1223.21.

Fannie Mae appreciates having the opportunity to comment on the Proposed Rule. If you have any questions or require additional information, please contact the undersigned at (202) 752-3256, or christine_e_reddy@fanniemae.com. In addition, if you would be interested in speaking with the executives leading our strategic planning process, we would be pleased to facilitate that discussion.

Sincerely,

A handwritten signature in blue ink that reads "C. E. Reddy".

Christine E. Reddy

Vice President, Deputy General Counsel, and Deputy Corporate Secretary