

FHFA Issues 2023 Regulatory Review Notice: Comments Due June 13, 2023

May 08, 2023

On April 14, 2023, the Federal Housing Finance Agency (FHFA) issued a [Notice of Regulatory Review](#) (Review Notice) as part of its Regulatory Review Plan (Review Plan) and is requesting comment on how FHFA rules and regulations could be made more effective and less burdensome. The comment deadline is June 13, 2023.

As background, the FHFA periodically conducts an internal review to “determine whether any regulation should be modified, streamlined, expanded, or repealed to make the agency’s regulatory program more effective or less burdensome in achieving its objectives.” Consistent with its Review Plan, which was first developed in 2012 in response to Executive Order 13579, the FHFA has committed to completing a comprehensive review at least every five years; however, regulations adopted or substantially amended within the two years prior to issuance of a Review Notice are generally out of scope. Reviews are conducted by the FHFA Office of General Counsel. The most recent review was initiated in April 2018.

To help guide commenters, the FHFA has provided five factors for consideration:

1. Legal or regulatory developments—including new laws, executive orders, or judicial decisions that have been adopted since the promulgation of a regulation—that make a regulation inefficient, obsolete, contrary to controlling legal precedent, or unduly burdensome;
2. marketplace developments, technological evolution, and related changes that may have rendered a regulation inefficient, outmoded, or outdated;
3. the extent to which provisions of a regulation are written in plain language or need clarification;
4. evidence that a consolidation of two or more regulations, elimination of a duplicative regulation, or other revision to regulatory requirements would help facilitate compliance by Fannie Mae or Freddie Mac (or any of their affiliates), the Federal Home Loan Banks (FHLB), or the Office of Finance of the Federal Home Loan Bank System (Finance Office), or would improve FHFA supervision of Fannie Mae or Freddie Mac (and their affiliates), the FHLBs, or the Finance Office; and
5. demonstration of a better alternative method to effect a regulatory purpose or requirement, supported by compelling evidence of significantly less intrusive means or of a substantially more efficient method of accomplishing the same supervisory purpose.

Because the FHFA is an independent federal agency, this is not a formal or informal rulemaking proceeding under the Administrative Procedure Act and creates no right of action. Further, the FHFA’s decision to conduct

or not conduct further review is not a final agency action and, therefore, not subject to judicial review. Regardless, given the extent of the FHFA's oversight authority, the opportunity to provide feedback and help shape regulatory policy is critically important for the mortgage banking industry.

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