

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1202

RIN 2590-AA44

### Freedom of Information Act Implementation

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Interim Final Regulation with request for comments.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing this interim final regulation with a request for comments on changes to its existing Freedom of Information Act (FOIA) regulation. The changes to the existing FOIA regulation provide the procedures and guidelines under which FHFA and FHFA Office of Inspector General (FHFA-OIG) will implement FOIA. The interim final regulation describes the policies and procedures for public disclosure of information required to be disclosed under FOIA, and procedures to protect from disclosure business confidential and trade secret information, as appropriate.

**DATES:** The interim final regulation is effective May 23, 2011. FHFA will accept written comments on the interim final regulation on or before July 22, 2011. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit your comments on the interim final regulation, identified by "RIN 2590-AA44," by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov). Please include "RIN 2590-AA44" in the subject line of the message.

- *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 sent 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-AA44."

- *U.S. Mail Service, United Parcel Service, Federal Express, or other commercial delivery service to:* Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA44, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Please note that all mail sent to FHFA via the U.S. Mail service 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.

- *Hand Delivery/Courier to:* Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA44, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package must be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 3 p.m.

#### FOR FURTHER INFORMATION CONTACT:

David A. Lee, Chief FOIA Officer, telephone (202) 414-3804 (not a toll free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

#### I. Comments

FHFA is issuing a revision to 12 CFR part 1202 to include language concerning FOIA requests as they relate to FHFA-OIG, as well as to clarify and update the existing regulation. FHFA invites comments on all aspects of the interim final regulation and will take all relevant comments into consideration before issuing the final regulation. All submissions received must include the agency name or Regulatory Information Number (RIN) for this rulemaking. Copies of all comments received will be posted without change on the FHFA Internet Web site, <http://www.fhfa.gov>, and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal

Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-3751.

#### II. Effective Date and Request for Comments

FHFA has concluded that good cause exists, under 5 U.S.C. 553(b)(B) and (d)(3), to waive the notice-and-comment and delayed effective date requirements of the Administrative Procedure Act and to proceed with this interim final regulation. The changes to part 1202 primarily cover how FHFA-OIG will implement FOIA and make clarifying and general updates to the existing regulation, but do not fundamentally change the regulation's nature or scope. Further, in light of the significant need for immediate guidance regarding FHFA-OIG's role in the FOIA process, FHFA has determined that notice-and-comment rulemaking is impracticable and contrary to public policy. Nevertheless, FHFA is providing the public with a 60-day period following publication of the interim final regulation to submit comments. Any comments received will be considered prior to issuing a final regulation.

#### III. Background

##### A. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4501 *et seq.*) and the Federal Home Loan Bank Act (12 U.S.C. 1421-1449) to establish FHFA as an independent agency of the Federal Government to ensure that the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively, the regulated entities) are capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; operate in a safe and sound manner; comply with the Safety and Soundness Act and all rules, regulations, guidelines and orders issued under the Safety and Soundness Act, and the regulated entities' respective authorizing statutes; carry out their missions through activities consistent with the aforementioned

authorities; and the activities and operations of the regulated entities are consistent with the public interest.

In 2009 FHFA issued a final regulation on FOIA at 12 CFR part 1202 (74 FR 2342 (January 15, 2009)). This final regulation provided the procedures and guidelines under which FHFA would implement FOIA. FHFA-OIG did not exist when it was issued, but came into existence the following year (2010). This interim final regulation updates FHFA's 2009 FOIA regulation to provide how FHFA-OIG will implement FOIA as well as to clarify and update the existing regulation.

#### *B. Establishment of the Office of Inspector General for the Federal Housing Finance Agency*

Section 1105 of HERA amended the Safety and Soundness Act and the Inspector General Act of 1978, as amended, by specifying that there shall be established an Inspector General within FHFA. See 12 U.S.C. 4517(d). Among other duties, FHFA-OIG is responsible for conducting audits, evaluations, and investigations of FHFA's programs and operations; recommending policies that promote economy and efficiency in the administration of FHFA's programs and operations; and preventing and detecting fraud, waste, and abuse in FHFA's programs and operations.

#### **IV. Section-by-Section Analysis**

##### *Section 1202.1 Why did FHFA issue this regulation?*

This section describes the purposes of the regulation, which are to implement FOIA and explain general policies and procedures for disclosing information under FOIA. In addition, there are minor editorial changes to the existing regulation for clarity and consistency purposes, as well as notification to the public that this regulation applies to FHFA-OIG.

##### *Section 1202.2 What do the terms in this regulation mean?*

This section sets forth definitions of many terms relevant to the regulation and includes new definitions as well as definitions related to FHFA-OIG.

##### *Section 1202.3 What information can I obtain through FOIA?*

This section is updated to explain the type of information that may be obtained under FOIA.

##### *Section 1202.4 What information is exempt from disclosure?*

This section describes records that FHFA and FHFA-OIG do not have to disclose, even if requested.

##### *Section 1202.5 How do I request information from FHFA or FHFA-OIG under FOIA?*

This section explains what a person must do to submit a valid request to FHFA or FHFA-OIG to disclose records. It describes the information to provide, to enable FHFA or FHFA-OIG to identify the records sought and determine whether they can be disclosed.

##### *Section 1202.6 What if my request does not have all the information FHFA or FHFA-OIG requires?*

This section explains that FHFA or FHFA-OIG will give requesters an opportunity to modify or amend a request that is incomplete or insufficient. It also explains how FHFA or FHFA-OIG will treat such requests until adequate information is received.

##### *Section 1202.7 How will FHFA or FHFA-OIG respond to my FOIA request?*

This section describes a multi-track method of processing requests and the times within which FHFA or FHFA-OIG will respond to requests. It also explains that FHFA or FHFA-OIG will grant or deny requests in writing, provide reasons if a request is denied in whole or in part, refer the request to another agency if it is appropriate to do so, and explain the right of appeal.

##### *Section 1202.8 If the requested records contain confidential commercial information, what procedures will FHFA or FHFA-OIG follow?*

This section explains how FHFA and FHFA-OIG comply with Executive Order No. 12600 and describes special procedures required before FHFA or FHFA-OIG disclose confidential commercial information in response to a FOIA request.

##### *Section 1202.9 How do I appeal a response denying my FOIA request?*

This section describes the process by which a requester whose request is denied in whole or in part may appeal. It explains when and how to appeal and how and within what time limits FHFA or FHFA-OIG will respond to appeals.

##### *Section 1202.10 Will FHFA or FHFA-OIG expedite my request or appeal?*

This section explains how a person can ask FHFA or FHFA-OIG to expedite a request or appeal. It describes the reasons that justify expediting a request or an appeal and the time within which FHFA or FHFA-OIG will notify the person that the request or appeal will or will not be expedited.

##### *Section 1202.11 What will it cost to get the records I requested?*

This section explains when FHFA or FHFA-OIG will charge for searching for and providing copies of records and how to identify the costs FHFA or FHFA-OIG will charge. In addition, language is being added regarding fee waivers.

##### *Section 1202.12 Is there anything else I need to know about FOIA procedures?*

This section explains that this regulation does not create any independent rights, but provides procedures for exercising rights granted by FOIA.

#### **Regulatory Impacts**

##### *Paperwork Reduction Act*

The regulations in this part do not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### *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. Such an analysis need not be undertaken if the agency has certified that the regulation does 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 regulation under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the internal operations and legal obligations of FHFA and FHFA-OIG.

#### **List of Subjects in 12 CFR Part 1202**

Appeals, Confidential commercial information, Disclosure, Exemptions, Fees, Final action, Freedom of Information Act, Judicial review, Records, Requests.

#### **Authority and Issuance**

Accordingly, for the reasons stated in the preamble, FHFA is revising part 1202 of Chapter XII of title 12 of the Code of Federal Regulations as follows:

**PART 1202—FREEDOM OF INFORMATION ACT**

## Sec.

- 1202.1 Why did FHFA issue this regulation?
- 1202.2 What do the terms in this regulation mean?
- 1202.3 What information can I obtain through FOIA?
- 1202.4 What information is exempt from disclosure?
- 1202.5 How do I request information from FHFA or FHFA–OIG under FOIA?
- 1202.6 What if my request does not have all the information FHFA or FHFA–OIG requires?
- 1202.7 How will FHFA or FHFA–OIG respond to my FOIA request?
- 1202.8 If the requested records contain confidential commercial information, what procedures will FHFA or FHFA–OIG follow?
- 1202.9 How do I appeal a response denying my FOIA request?
- 1202.10 Will FHFA or FHFA–OIG expedite my request or appeal?
- 1202.11 What will it cost to get the records I requested?
- 1202.12 Is there anything else I need to know about FOIA procedures?

**Authority:** Pub. L. 110–289, 122 Stat. 2654; 5 U.S.C. 301, 552; 12 U.S.C. 4526; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

**§ 1202.1 Why did FHFA issue this regulation?**

(a) The Freedom of Information Act (FOIA) (5 U.S.C. 552), is a federal law that requires FHFA and other Federal Government agencies to disclose certain Federal Government records to the public.

(b) This regulation explains the rules that FHFA and the FHFA Office of Inspector General (FHFA–OIG) both follow when processing and responding to requests for records under FOIA. It also explains what you must do to request records from FHFA or FHFA–OIG under FOIA. You should read this regulation together with FOIA, which explains in more detail your rights and the records FHFA or FHFA–OIG may release to you.

(c) If you want to request information about yourself under the Privacy Act (5 U.S.C. 552a), you should file your request using FHFA's Privacy Act regulations at part 1204 of this title. If you file a FOIA request for information about yourself, FHFA or FHFA–OIG will process it as a request under the Privacy Act regulation.

(d) FHFA and FHFA–OIG may make public information that they routinely publish or disclose when performing their activities without following these procedures.

(e) This regulation applies to both FHFA and FHFA–OIG.

**§ 1202.2 What do the terms in this regulation mean?**

Some of the terms you need to understand while reading this regulation are—

*Appeals Officer or FOIA Appeals Officer* means a person designated by the FHFA Director to process appeals of denials of requests for FHFA records under FOIA. For appeals pertaining to FHFA–OIG records, *Appeals Officer or FOIA Appeals Officer* means a person designated by the FHFA Inspector General to process appeals of denials of requests for FHFA–OIG records under FOIA.

*Confidential commercial information* means records provided to the Federal Government by a submitter that contain material exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

*Days*, unless stated as “calendar days,” are working days and do not include Saturdays, Sundays, and federal holidays. If the last day of any period prescribed herein falls on a Saturday, Sunday, or federal holiday, the last day of the period will be the next working day that is not a Saturday, Sunday, or federal holiday.

*Direct costs* means the expenses, including contract services, incurred by FHFA or FHFA–OIG, in searching for, reviewing and/or duplicating records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures FHFA or FHFA–OIG actually incurs in reviewing records to respond to the request. Direct costs include the cost of the time of the employee performing the work, the cost of any computer searches, and the cost of operating duplication equipment. Direct costs do not include overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

*Employee*, for the purposes of this regulation, means any person holding an appointment to a position of employment with FHFA or FHFA–OIG, or any person who formerly held such an appointment; any conservator appointed by FHFA; or any agent or independent contractor acting on behalf of FHFA or FHFA–OIG, even though the appointment or contract has terminated.

*FHFA* means the Federal Housing Finance Agency and includes its predecessor agencies, the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB).

*FHFA–OIG* means the Office of Inspector General for FHFA.

*FOIA Officer and Chief FOIA Officer* are persons designated by the FHFA Director to process and respond to requests for FHFA records under FOIA.

*FOIA Official* is a person designated by the FHFA Inspector General to process requests for FHFA–OIG records under FOIA.

*Office of Finance* means the Office of Finance of the Federal Home Loan Bank System or any successor thereto.

*Readily reproducible* means that the requested record or records exist in electronic format and can be downloaded or transferred intact to a computer disk, tape, or another electronic medium with equipment and software currently in use by FHFA or FHFA–OIG.

*Record* means information or documentary material FHFA or FHFA–OIG maintains in any form or format, including electronic, which FHFA or FHFA–OIG—

(1) Created or received under federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of operations or activities of FHFA or FHFA–OIG, or because of the value of the information it contains; and

(3) Controls at the time it receives a request for disclosure.

*Regulated entities* means the Federal Home Loan Mortgage Corporation and any affiliate thereof, the Federal National Mortgage Association and any affiliate thereof, and the Federal Home Loan Banks.

*Requester* means any person seeking access to FHFA or FHFA–OIG records under FOIA.

*Search time* means the amount of time spent by or on behalf of FHFA or FHFA–OIG in attempting to locate records responsive to a request, whether manually or by electronic means, including but not limited to page-by-page or line-by-line identification of responsive material within a record or extraction of electronic information from electronic storage media.

*Submitter* means any person or entity providing confidential information to the Federal Government. The term “submitter” includes, but is not limited to corporations, state governments, and foreign governments.

*Unusual circumstances* means the need to—

(1) Search for and/or collect records from agencies, offices, facilities, or locations that are separate from the office processing the request;

(2) Search, review, and/or duplicate a voluminous amount of separate and

distinct records in order to process a single request; or

(3) Consult with another agency or among two or more components of FHFA or FHFA-OIG that have a substantial interest in the determination of a request.

### **§ 1202.3 What information can I obtain through FOIA?**

(a) *General.* FHFA and FHFA-OIG prohibit employees from releasing or disclosing confidential or otherwise non-public information that FHFA or FHFA-OIG possesses, except as authorized by this regulation, by the Director of FHFA for FHFA records, or by the FHFA Inspector General for FHFA-OIG records, when the disclosure is necessary for the performance of official duties.

(b) *Records.* You may request that FHFA or FHFA-OIG disclose to you its records on a subject of interest to you. FOIA only requires the disclosure of records. It does not require FHFA or FHFA-OIG to create compilations of information or to provide narrative responses to questions or queries. Some information is exempt from disclosure.

(c) *Reading rooms.*—(1) FHFA maintains electronic and physical reading rooms. FHFA's physical reading room is located at 1700 G Street, NW., Fourth Floor, Washington, DC 20552, and is open to the public by appointment from 9 a.m. to 3 p.m. each business day. For an appointment, contact the FOIA Officer by calling (202) 414-6425 or by e-mail at [foia@fhfa.gov](mailto:foia@fhfa.gov). The electronic reading room is part of the FHFA Web site at <http://www.fhfa.gov>. FHFA-OIG also maintains electronic and physical reading rooms. FHFA-OIG's physical reading room is located at 1625 Eye Street, NW., Washington, DC 20006, and is open to the public by appointment from 9 a.m. to 3 p.m. each business day. For an appointment, contact FHFA-OIG by calling (202) 408-2577 or by e-mail at [bryan.saddler@fhfa.gov](mailto:bryan.saddler@fhfa.gov). The electronic reading room is part of the FHFA-OIG Web site at <http://www.fhfaoig.gov>.

(2) Each reading room has the following records created after November 1, 1996, by FHFA or its predecessor agencies, or by FHFA-OIG, and current indices to the following records created by FHFA or its predecessor agencies or FHFA-OIG before or after November 1, 1996:

(i) Final opinions or orders issued in adjudication;

(ii) Statements of policy and interpretation that are not published in the **Federal Register**;

(iii) Administrative staff manuals and instructions to staff that affect a member of the public and are not exempt from disclosure under FOIA; and

(iv) Copies of records released under FOIA that FHFA or FHFA-OIG determines have become or are likely to become the subject of subsequent requests for substantially similar records.

### **§ 1202.4 What information is exempt from disclosure?**

(a) *General.* Unless the Director of FHFA or his or her designee for FHFA records, the FHFA Inspector General or his or her designee for FHFA-OIG records, or any regulation or statute specifically authorizes disclosure, neither FHFA nor FHFA-OIG will release records that are—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and in fact is properly classified pursuant to such Executive Order;

(2) Related solely to FHFA's or FHFA-OIG's internal personnel rules and practices;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552a), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Contained in inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with FHFA or FHFA-OIG;

(6) Contained in personnel, medical or similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution or an entity that is

regulated and examined by FHFA that furnished information on a confidential basis, and, in the case of a record compiled by FHFA-OIG or a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Discretion to apply exemptions.* Although records or parts of them may be exempt from disclosure, FHFA or FHFA-OIG may elect under the circumstances of any particular request not to apply an exemption. This election does not generally waive the exemption and it does not have precedential effect. FHFA or FHFA-OIG may still apply an exemption to any other records or portions of records, regardless of when the request is received.

(c) *Redacted portion.* If a requested record contains exempt information and information that can be disclosed and the portions can reasonably be segregated from each other, the disclosable portion of the record will be released to the requester after FHFA or FHFA-OIG deletes the exempt portions. If it is technically feasible, FHFA or FHFA-OIG will indicate the amount of the information deleted at the place in the record where the deletion is made and include a notation identifying the exemption that was applied, unless including that indication would harm an interest protected by an exemption.

(d) *Exempt and redacted material.* FHFA and FHFA-OIG are not required to provide an itemized index correlating each withheld document (or redacted portion) with a specific exemption justification.

(e) *Disclosure to Congress.* This section does not allow FHFA or FHFA-OIG to withhold any information from, or to prohibit the disclosure of any information to, Congress or any

Congressional committee or subcommittee.

**§ 1202.5 How do I request information from FHFA or FHFA-OIG under FOIA?**

(a) *Where to send your request.* FOIA requests must be in writing. You may make a request for FHFA or FHFA-OIG records by writing directly to FHFA's FOIA Office through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: [foia@fhfa.gov](mailto:foia@fhfa.gov). For mail or delivery service, the mailing address is: FOIA Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The facsimile number is: (202) 414-8917. Requests for FHFA-OIG records will be forwarded to FHFA-OIG for processing and direct response. You can help FHFA and FHFA-OIG process your request by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with "FOIA Request." FHFA's "Freedom of Information Act Reference Guide," which is available on FHFA's Web site, <http://www.fhfa.gov>, provides additional information to assist you in making your request.

(b) *Provide your name and address.* Your request must include your full name, your address and, if different, the address at which FHFA or FHFA-OIG is to notify you about your request, a telephone number at which you can be reached during normal business hours, and an electronic mail address, if any.

(c) *Request is under FOIA.* Your request must have a statement identifying it as being made under FOIA.

(d) *Your FOIA status.* If you are submitting your request as a "commercial use" requester, an "educational institution" requester, a "non-commercial scientific institution" requester, or a "representative of the news media" for the purposes of the fee provisions of FOIA, your request must include a statement specifically identifying your status.

(e) *Describing the records you request.* You must describe the records that you seek in enough detail to enable FHFA or FHFA-OIG personnel to locate them with a reasonable amount of effort. Your request should include as much specific information as possible that you know about each record you request, such as the date, title, name, author, recipient, subject matter, or file designations, or the description of the record.

(f) *How you want the records produced to you.* Your request must tell FHFA or FHFA-OIG whether you will inspect the records before duplication or

want them duplicated and furnished without inspection.

(g) *Agreement to pay fees.* In your FOIA request you must agree to pay all applicable fees charged under § 1202.11, up to \$100.00, unless you seek a fee waiver. When making a request, you may specify a higher or lower amount you will pay without consultation. Your inability to pay a fee does not justify granting a fee waiver.

(h) *Valid requests.* FHFA and FHFA-OIG will only process valid requests. A valid request must meet all the requirements of this part.

**§ 1202.6 What if my request does not have all the information FHFA or FHFA-OIG requires?**

If FHFA or FHFA-OIG determines that your request does not reasonably describe the records you seek, is overly broad, cannot yet be processed for reasons related to fees, or lacks required information, you will be informed in writing why your request cannot be processed. You will be given 15 calendar days to modify your request to meet all requirements. This request for additional information tolls the time period for FHFA or FHFA-OIG to respond to your request under § 1202.7.

(a) If you respond with the necessary information, FHFA or FHFA-OIG will process that response as a new request and the time period for FHFA or FHFA-OIG to respond to your request will start from the date the additional information is actually received by FHFA or FHFA-OIG.

(b) If you do not respond or provide additional information within the time allowed, or if the additional information you provide is still incomplete or insufficient, FHFA and FHFA-OIG will consider your request withdrawn and will notify you that it will not be processed.

**§ 1202.7 How will FHFA and FHFA-OIG respond to my FOIA request?**

(a) *Authority to grant or deny requests.* The FOIA Officer and the Chief FOIA Officer are authorized to grant or deny any request for FHFA records. For FHFA-OIG records, the designated FHFA-OIG FOIA Official is authorized to grant or deny any request for FHFA-OIG records.

(b) *Multi-Track request processing.* FHFA and FHFA-OIG use a multi-track system to process FOIA requests. This means that a FOIA request is processed based on its complexity. When FHFA or FHFA-OIG receives your request, it is assigned to a Standard Track or Complex Track. FHFA or FHFA-OIG will notify you if your request is assigned to the Complex Track as

described in paragraph (f) of this section.

(1) *Standard Track.* FHFA and FHFA-OIG assign FOIA requests that are routine and require little or no search time, review, or analysis to the Standard Track. FHFA and FHFA-OIG respond to these requests within 20 days after receipt, in the order in which they are received. If FHFA or FHFA-OIG determines while processing your Standard Track request, that it is more appropriately a Complex Track request, it will be reassigned to the Complex Track and you will be notified as described in paragraph (f) of this section.

(2) *Complex Track.*—(i) FHFA and FHFA-OIG assign requests that are non-routine to the Complex Track. Complex Track requests are those to which FHFA or FHFA-OIG determines that the request and/or response may—

- (A) Be voluminous;
- (B) Involve two or more FHFA or FHFA-OIG units;
- (C) Require consultation with other agencies or entities;
- (D) Require searches of archived documents;
- (E) Seek confidential commercial information as described in § 1202.8;
- (F) Require an unusually high level of effort to search for, review and/or duplicate records;
- (G) Cause undue disruption to the day-to-day activities of FHFA in regulating and supervising the regulated entities; or
- (H) Cause undue disruption to the day-to-day activities of FHFA-OIG in carrying out its statutory responsibilities.

(ii) FHFA or FHFA-OIG will respond to Complex Track requests as soon as reasonably possible, regardless of the date of receipt.

(c) *Referrals to other agencies.* When FHFA or FHFA-OIG receives a request seeking records that originated in another Federal Government agency, FHFA or FHFA-OIG will refer the request to the other agency for response. You will be notified if your request is referred to another agency.

(d) *Responses to FOIA requests.* FHFA or FHFA-OIG will respond to your request by granting or denying it in full, or by granting and denying it in part. The response will be in writing. In determining which records are responsive to your request, FHFA and FHFA-OIG will conduct searches for records FHFA or FHFA-OIG possesses as of the date of your request.

(1) *Requests that FHFA or FHFA-OIG grants.* If FHFA or FHFA-OIG grants your request, the response will include the requested records or details about

how FHFA or FHFA-OIG will provide them to you and the amount of any fees charged.

(2) *Requests that FHFA or FHFA-OIG denies, or grants and denies in part.* If FHFA or FHFA-OIG denies your request in whole or in part because a requested record does not exist or cannot be located, is not readily reproducible in the form or format you sought, is not subject to FOIA, or is exempt from disclosure, the written response will include the requested releasable records, if any, the amount of any fees charged, the reasons for denial, and a notice and description of your right to file an administrative appeal under § 1202.9.

(e) *Format and delivery of disclosed records.* If FHFA or FHFA-OIG grants, in whole or in part, your request for disclosure of records under FOIA, the records may be made available to you in the form or format you requested, if they are readily reproducible in that form or format. The records will be sent to the address you provided by regular U.S. Mail or by electronic mail unless alternate arrangements are made by mutual agreement, such as your agreement to pay express or expedited delivery service fees or to pick up records at FHFA or FHFA-OIG offices.

(f) *Extensions of time.*—(1) In unusual circumstances, FHFA or FHFA-OIG may extend the Standard Track time limit in paragraph (b)(1) of this section for no more than 10 days and notify you of—

- (i) The reason for the extension; and
- (ii) The date on which the determination is expected.

(2) For requests in the Complex Track, FHFA or FHFA-OIG will provide you with an opportunity to modify or reformulate your request so that it may be processed on the Standard Track. If the request cannot be modified or reformulated to permit processing on the Standard Track, FHFA or FHFA-OIG will notify you regarding an alternative time period for processing the request.

**§ 1202.8 If the requested records contain confidential commercial information, what procedures will FHFA or FHFA-OIG follow?**

(a) *General.* FHFA or FHFA-OIG will not disclose confidential commercial information in response to your FOIA request except as described in this section.

(b) *Designation of confidential commercial information.* Submitters of commercial information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of the

information they deem to be protected under 5 U.S.C. 552(b)(4) and § 1202.4(a)(4). Any such designation will expire 10 years after the records are submitted to the Federal Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Pre-disclosure notification.* Except as provided in paragraph (e) of this section, if your FOIA request encompasses confidential commercial information, FHFA or FHFA-OIG will, prior to disclosure of the information and to the extent permitted by law, provide prompt written notice to a submitter that confidential commercial information was requested when—

(1) The submitter has in good faith designated the information as confidential commercial information protected from disclosure under 5 U.S.C. 552(b)(4) and § 1202.4(a)(4); or

(2) FHFA or FHFA-OIG has reason to believe that the request seeks confidential commercial information, the disclosure of which may result in substantial competitive harm to the submitter.

(d) *Content of pre-disclosure notification.* When FHFA or FHFA-OIG sends a pre-disclosure notification to a submitter, it will contain—

(1) A description of the confidential commercial information requested or copies of the records or portions thereof containing the confidential business information; and

(2) An opportunity to object to disclosure within 10 days or such other time period that FHFA or FHFA-OIG may allow, by providing to FHFA or FHFA-OIG a detailed written statement demonstrating all reasons the submitter opposes disclosure.

(e) *Exceptions to pre-disclosure notification.* FHFA or FHFA-OIG is not required to send a pre-disclosure notification if—

(1) FHFA or FHFA-OIG determines that information should not be disclosed;

(2) The information has been published lawfully or has been made officially available to the public;

(3) Disclosure of the information is required by law, other than FOIA;

(4) The information requested is not designated by the submitter as confidential commercial information pursuant to this section; or

(5) The submitter's designation, under paragraph (b) of this section, appears on its face to be frivolous; except that FHFA or FHFA-OIG will provide the submitter with written notice of any final decision to disclose the designated confidential commercial information

within a reasonable number of days prior to a specified disclosure date.

(f) *Submitter's objection to disclosure.* A submitter may object to disclosure within 10 days after date of the Pre-disclosure Notification, or such other time period that FHFA or FHFA-OIG may allow, by delivering to FHFA or FHFA-OIG a statement demonstrating all grounds on which it opposes disclosure, and all reasons supporting its contention that the information should not be disclosed. The submitter's objection must contain a certification by the submitter, or an officer or authorized representative of the submitter, that the grounds and reasons presented are true and correct to the best of the submitter's knowledge. The submitter's objection may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose information.* FHFA or FHFA-OIG will carefully consider all grounds and reasons provided by a submitter objecting to disclosure. If FHFA or FHFA-OIG decides to disclose the information over the submitter's objection, the submitter will be provided with a written notice of intent to disclose at least 10 days before the date of disclosure. The written notice will contain—

(1) A statement of the reasons why the information will be disclosed;

(2) A description of the information to be disclosed; and

(3) A specific disclosure date.

(h) *Notice to requester.* FHFA or FHFA-OIG will give a requester whose request encompasses confidential commercial information—

(1) A written notice that the request encompasses confidential commercial information that may be exempt from disclosure under 5 U.S.C. 552(b)(4) and § 1202.4(a)(4) and that the submitter of the information has been given a pre-disclosure notification with the opportunity to comment on the proposed disclosure of the information; and

(2) A written notice that a notice of intent to disclose has been provided to the submitter, and that the submitter has 10 days, or such other time period that FHFA or FHFA-OIG may allow, to respond.

(i) *Notice of FOIA lawsuit.* FHFA or FHFA-OIG will promptly notify the submitter whenever a requester files suit seeking to compel disclosure of the submitter's confidential commercial information. FHFA or FHFA-OIG will promptly notify the requester whenever a submitter files suit seeking to prevent disclosure of information.

**§ 1202.9 How do I appeal a response denying my FOIA request?**

(a) *Right of appeal.* If FHFA or FHFA–OIG denied your request in whole or in part, you may appeal the denial by writing directly to the FOIA Appeals Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: [foia@fhfa.gov](mailto:foia@fhfa.gov). For mail or delivery service, the mailing address is: FOIA Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The facsimile number is: (202) 414–8917. You can help FHFA and FHFA–OIG process your appeal by marking electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “FOIA Appeal.” For appeals of denials, whether in whole or in part, made by FHFA–OIG, the appeal must be clearly marked by adding “FHFA–OIG” after “FOIA Appeal.” All appeals from denials, in whole or in part, made by FHFA–OIG will be forwarded to the FHFA–OIG FOIA Appeals Officer for processing and direct response. FHFA’s “Freedom of Information Act Reference Guide,” which is available on FHFA’s Web site, <http://www.fhfa.gov>, provides additional information to assist you in making your appeal.

(b) *Timing, form, content, and receipt of an appeal.* Your appeal must be written and submitted within 30 calendar days of the date of the decision by FHFA or FHFA–OIG denying, in whole or in part, your request. Your appeal must include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments you believe support disclosure of the requested record(s). FHFA and FHFA–OIG will not consider an improperly addressed appeal to have been received for the purposes of the 20-day time period of paragraph (d) of this section until it is actually received by FHFA.

(c) *Extensions of time to appeal.* If you need more time to file your appeal, you may request, in writing, an extension of time of no more than 10 calendar days in which to file your appeal, but only if your request is made within the original 30-calendar day time period for filing the appeal. Granting such an extension is in the sole discretion of the FHFA or FHFA–OIG FOIA Appeals Officer.

(d) *Final action on appeal.* FHFA’s or FHFA–OIG’s determination on your appeal will be in writing, signed by the FHFA or FHFA–OIG FOIA Appeals Officer, and sent to you within 20 days after the appeal is received, or by the last day of the last extension under

paragraph (e) of this section. The determination of an appeal is the final action of FHFA or FHFA–OIG on a FOIA request. A determination may—

(1) Affirm, in whole or in part, the initial denial of the request and may include a brief statement of the reason or reasons for the decision, including each FOIA exemption relied upon;

(2) Reverse, in whole or in part, the denial of a request in whole or in part, and require the request to be processed promptly in accordance with the decision; or

(3) Remand a request to FHFA or FHFA–OIG, as appropriate, for re-processing, stating the time limits for responding to the remanded request.

(e) *Notice of delayed determinations on appeal.* If FHFA or FHFA–OIG cannot send a determination on your appeal within the 20-day time limit, the designated Appeals Officer will continue to process the appeal and upon expiration of the time limit, will inform you of the reason(s) for the delay and the date on which a determination may be expected. In this notice of delay, the FHFA or FHFA–OIG FOIA Appeals Officer may request that you forebear seeking judicial review until a final determination is made.

(f) *Judicial review.* If the denial of your request for records is upheld in whole or in part, or if a determination on your appeal has not been sent at the end of the 20-day period in paragraph (d) of this section, or the last extension thereof, you may seek judicial review under 5 U.S.C. 552(a)(4).

**§ 1202.10 Will FHFA or FHFA–OIG expedite my request or appeal?**

(a) *Request for expedited processing.* You may request, in writing, expedited processing of an initial request or of an appeal. FHFA or FHFA–OIG may grant expedited processing, and give your request or appeal priority if your request for expedited processing demonstrates a compelling need by establishing one or more of the following—

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if you are a person primarily engaged in disseminating information;

(3) The loss of substantial due process or rights;

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the Federal Government’s integrity, affecting public confidence; or

(5) Humanitarian need.

(b) *Certification of compelling need.* Your request for expedited processing must include a statement certifying that the reason(s) you present demonstrate a compelling need are true and correct to the best of your knowledge.

(c) *Determination on request.* FHFA or FHFA–OIG will notify you within 10 days of receipt of your request whether expedited processing has been granted. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal under § 1202.9 of that decision will be acted on expeditiously.

**§ 1202.11 What will it cost to get the records I requested?**

(a) *Assessment of fees, generally.* FHFA or FHFA–OIG will assess you for fees covering the direct costs of responding to your request and costs for duplicating records, except as otherwise provided in a statute with respect to the determination of fees that may be assessed for disclosure, search time, or review of particular records.

(b) *Assessment of fees, categories of requesters.* The fees that FHFA or FHFA–OIG may assess vary depending on the type of request or the type of requester you are—

(1) *Commercial use.* If you request records for a commercial use, the fees that FHFA or FHFA–OIG may assess are limited to FHFA’s or FHFA–OIG’s operating costs incurred for document search, review, and duplication.

(2) *Educational institution, noncommercial scientific institution, or representative of the news media.* If you are not requesting records for commercial use and you are an educational institution or a noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the fees that may be assessed are limited to standard reasonable charges for duplication in excess of 100 pages or an electronic equivalent of 100 pages.

(3) *Other.* If neither paragraph (b)(1) nor paragraph (b)(2) of this section applies, the fees assessed are limited to the costs for document searching in excess of two hours and duplication in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) *Fee schedule.* The current schedule of fees is maintained on FHFA’s Web site at: <http://www.fhfa.gov>.

(d) *Notice of anticipated fees in excess of \$100.00.* When FHFA or FHFA–OIG determines or estimates that the fees chargeable to you will exceed \$100.00,



you will be notified of the actual or estimated amount of fees you will incur, unless you earlier indicated your willingness to pay fees as high as those anticipated. When you are notified that the actual or estimated fees exceed \$100.00, your FOIA request will not be considered received by FHFA or FHFA-OIG until you agree to pay the anticipated total fee.

(e) *Advance payment of fees.* FHFA or FHFA-OIG may request that you pay estimated fees or a deposit in advance of responding to your request. If FHFA or FHFA-OIG requests advance payment or a deposit, your request will not be considered received by FHFA or FHFA-OIG until the advance payment or deposit is received. FHFA or FHFA-OIG will request advance payment or a deposit if—

(1) The fees are likely to exceed \$500.00. FHFA or FHFA-OIG will notify you of the likely cost and obtain from you satisfactory assurance of full payment if you have a history of prompt payment of FOIA fees to FHFA or FHFA-OIG;

(2) You do not have a history of payment, or if the estimate of fees exceeds \$1,000.00, FHFA or FHFA-OIG may require an advance payment of fees in an amount up to the full estimated charge that will be incurred;

(3) You previously failed to pay a fee to FHFA or FHFA-OIG in a timely fashion, *i.e.*, within 30 calendar days of the date of a billing, FHFA or FHFA-OIG may require you to make advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request; or

(4) You have an outstanding balance due from a prior request. FHFA or FHFA-OIG may require you to pay the full amount owed plus any applicable interest, as provided in paragraph (f) of this section, or demonstrate that the fee owed has been paid, as well as payment of the full amount of anticipated fees before processing your request.

(f) *Interest.* FHFA or FHFA-OIG may charge you interest on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent. Once a fee payment has been received by FHFA or FHFA-OIG, even if not processed, FHFA or FHFA-OIG will stay the accrual of interest. Interest charges will be assessed at the rate prescribed by 31 U.S.C. 3717 and will accrue from the date of the billing.

(g) *FHFA or FHFA-OIG assistance to reduce costs.* If FHFA or FHFA-OIG notifies you of estimated fees exceeding \$100.00 or requests advance payment or a deposit, you will have an opportunity to consult with FHFA or FHFA-OIG

FOIA staff to modify or reformulate your request to meet your needs at a lower cost.

(h) *Fee waiver requests.* You may request a fee waiver in accordance with FOIA and this regulation. FHFA or FHFA-OIG may grant your fee waiver request if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester. In submitting a fee waiver request, you must address the following six factors—

(1) Whether the subject of the requested records concerns the operations or activities of the Federal Government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) Whether disclosure of the requested information will contribute to public understanding;

(4) Whether the disclosure is likely to contribute significantly to public understanding of Federal Government operations or activities;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(i) *Determination on request.* FHFA or FHFA-OIG will notify you within 20 days of receipt of your request whether the fee waiver has been granted. A request for fee waiver that is denied may only be appealed when a final decision has been made on the initial FOIA request.

#### **§ 1202.12 Is there anything else I need to know about FOIA procedures?**

This FOIA regulation does not and shall not be construed to create any right or to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under FOIA. This regulation only provides procedures for requesting records under FOIA.

Dated: May 12, 2011.

**Edward J. DeMarco,**  
*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2011-12485 Filed 5-20-11; 8:45 am]

**BILLING CODE 8070-01-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

[Docket No. USCG-2011-0126]

RIN 1625-AA08

#### **Special Local Regulations for Marine Events; Chester River, Chestertown, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations during the reenactment portion of the “Chestertown Tea Party Festival,” a marine event to be held on the waters of the Chester River, Chestertown, MD on May 28, 2011. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Chester River during the event.

**DATES:** This rule is effective from 10 a.m. until 5 p.m. on May 28, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0126 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0126 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

On March 21, 2011, we published a notice of proposed rulemaking (NPRM) entitled “Special Local Regulations for Marine Events; Chester River, Chestertown, MD” in the **Federal Register** (76 FR 54). We received no