

deposit insurance assessment rates; and also effective April 1, 2009, make technical and other changes to the rules governing the risk-based assessment system. The proposed rules were published for a 30-day comment period, which is scheduled to close on November 17, 2008. In order to afford interested parties additional time beyond the present 30-day comment period to review the proposals with an April 1, 2009 effective date, the FDIC is extending the period for public comment by 30 days, that is, until December 17, 2008. The present 30-day comment period for the proposed seven basis point rate increase for the first quarter of 2009 only, with its separate proposed effective date of January 1, 2009, is not extended and will expire on November 17, 2008.

**DATES:** Comments must be received on or before December 17, 2008.

**ADDRESSES:** You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web Site.

- *E-mail:* [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include the RIN number in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429

- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Instructions:* All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Munsell W. St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898-8967; and Christopher Bellotto, Counsel, Legal Division, (202) 898-3801.

**SUPPLEMENTARY INFORMATION:** In its notice of proposed rulemaking (73 FR 61560), the FDIC proposes to improve the way the assessment system differentiates risk among insured institutions by drawing upon measures of risk that were not included when the FDIC first revised its assessment system pursuant to the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005

(collectively, the Reform Act).<sup>1</sup> The proposal will make the assessment system more sensitive to risk and the risk-based assessment system fairer, by limiting the subsidization of riskier institutions by safer ones. In addition, the FDIC proposes to change assessment rates, including base assessment rates, and to raise assessment revenue as required under the FDIC's October 7, 2008 Restoration Plan (73 FR 61598).

In this rulemaking, the FDIC requested comment on proposed rules that would (1) effective January 1, 2009, raise current assessment rates uniformly by seven basis points for the first quarter 2009 assessment period only; (2) effective April 1, 2009, alter the way in which the risk-based assessment system differentiates for risk and again change deposit insurance assessment rates; and (3) also effective April 1, 2009, make technical and other changes to the rules governing the risk-based assessment system. The proposed rules were published on October 16, 2008, for a 30-day comment period, which is scheduled to close on November 17, 2008.

To afford interested parties additional time beyond the present 30-day comment period to review only those portions of the proposal that would become effective April 1, 2009 (items (2) and (3) above), the FDIC is extending the period for public comment by 30 days. In light of this determination, the FDIC is providing the public additional time to comment on these aspects of the proposal, and requests that you submit your comments by December 17, 2008.

The present 30-day comment period for the proposed seven basis point rate increase for the January 2009 assessment period only, which has a separate proposed effective date of January 1, 2009, is not extended and will expire as originally provided on November 17, 2008.

Dated at Washington DC, this 7th day of November 2008.

By order of the Board of Directors.  
Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. E8-26972 Filed 11-13-08; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1231

RIN 2590-AA08

### Golden Parachute and Indemnification Payments

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Proposed amendment.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to amend the interim final Golden Parachute Payments regulation published in the **Federal Register** on September 16, 2008 (73 FR 53356), and as corrected on September 19, 2008 (73 FR 54309), and on September 23, 2008 (73 FR 54673). This proposed amendment addresses prohibited and permissible indemnification payments with regard to any administrative proceeding brought by the FHFA against an entity-affiliated party of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks in light of the statutory requirements set forth in 12 U.S.C. 4514(e), as amended by the Housing and Economic Recovery Act of 2008.

**DATES:** Written comments on the proposed amendment to the Interim Final Regulation must be received on or before December 29, 2008. For additional information, see

#### SUPPLEMENTARY INFORMATION.

**ADDRESSES:** You may submit your comments on the proposed amendment, identified by regulatory information number "RIN 2590-AA08," by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel; Attention: Comments/RIN 2590-AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel; Attention: Comments/RIN 2590-AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel, may be sent by e-mail at

<sup>1</sup> Federal Deposit Insurance Reform Act of 2005, Public Law 109-171, 120 Stat. 9; Federal Deposit Insurance Conforming Amendments Act of 2005, Public Law 109-173, 119 Stat. 3601.

[RegComments@FHFA.gov](mailto:RegComments@FHFA.gov). Please include "RIN 2590-AA08" in the subject line of the message.

• *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:**

Alfred M. Pollard, General Counsel, telephone (202) 414-3788; or Christopher Curtis, General Counsel, telephone (202) 408-2802 (not toll-free numbers), 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**

The FHFA invites comments on all aspects of the proposed amendment and will take all comments into consideration before issuing the final regulation. The FHFA requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5" disk or CD-ROM.

Copies of all comments will be posted on the internet Web site at <http://www.FHFA.gov>. 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. Background**

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 (12 U.S.C. 4501 *et seq.*) (Act) to establish FHFA as an independent agency of the Federal Government.<sup>1</sup> FHFA was established to oversee the prudential operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities), and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Act and rules,

regulation, guidelines and orders issued under the Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest.

**III. Proposed Amendment to Interim Final Regulation**

The FHFA published the Interim Final Regulation on Golden Parachute and Indemnification Payments in the *Federal Register* on September 16, 2008 (73 FR 53356). Subsequently, it published corrections rescinding that portion of the regulation that addressed indemnification payments on September 19, 2008 (73 FR 54309), and on September 23, 2008 (73 FR 54673).

Section 1114 of HERA amended 12 U.S.C. 4518 to provide additional authorities to FHFA in addressing certain compensation and benefits, including "golden parachute" and "indemnification payments" as those terms are defined therein. The proposed amendment would describe prohibited and permissible indemnification payments that a regulated entity may make to an entity-affiliated party in connection with administrative proceedings or civil actions instituted by FHFA. The provisions of the proposed amendment addressing indemnification payments are substantially similar to the regulation that limits indemnification by insured depository institutions to institution-affiliated parties.

In proposing the amendment, FHFA recognizes that prior to the enactment of HERA, the regulated entities may have entered into indemnification agreements that provide for indemnification beyond that which is proposed to be permissible under 12 U.S.C. 4518(e) and the proposed amendment. The FHFA intends that the proposed amendment would apply to agreements entered into by a regulated entity with an entity-affiliated party on or after the date the regulation is effective.

The FHFA is also of the view that the enactment of section 1114 of HERA makes clear that Congress has authorized FHFA to limit or prohibit a regulated entity from indemnifying an entity-affiliated party for any civil money penalty, notwithstanding the language of 12 U.S.C. 4636(g). Nevertheless, FHFA is of the view that it would be in the best interests of the regulated entities to permit indemnification of first and second tier civil money penalties where the

administrative proceeding or civil action relates to conduct occurring while the regulated entity was in conservatorship. FHFA specifically requests comments on this point.

Section 1313(f) of the Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed amendment, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a revision of the proposed amendment as it relates to the Banks.

**Regulatory Impact**

*Paperwork Reduction Act*

The proposed amendment does 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 will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The FHFA has considered the impact of the proposed amendment under the Regulatory Flexibility Act. The FHFA certifies that the proposed amendment 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 regulated entities, which are not small entities for the purposes of the Regulatory Flexibility Act.

**List of Subjects in 12 CFR Part 1231**

Golden Parachutes, Government-sponsored enterprises, Indemnification.

<sup>1</sup> See Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4518(e) and 4526, the Federal Housing Finance Agency proposes to amend part 1231 of subchapter B of title 12 CFR Chapter XII by making the following amendments:

Subchapter B—Entity Regulations

PART 1231—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

1. The authority citation for part 1231 is revised to read as follows:

Authority: 12 U.S.C. 4518(e); 12 U.S.C. 4526.

2. Section 1231.1 is revised to read as follows:

§ 1231.1 Purpose and scope.

The purpose of this part is to implement section 1318(e) of the Act (12 U.S.C. 4518(e)) by setting forth the standards that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments and by setting forth prohibited and permissible indemnification payments that regulated entities may make to entity-affiliated parties.

3. Section 1231.2 is amended by:

- a. Removing the paragraph designations before each definition.
b. Removing the reserved paragraphs (l) through (n).
c. Placing the definition for FHFA in alphabetical order.
d. Adding the definitions for "Liability or legal expenses," "Payment" and "Prohibited indemnification payment" in alphabetical order.

The additions read as follows:

§ 1231.2 Definitions.

\* \* \* \* \*

Liability or legal expense means—

- (1) Any legal or other professional expense incurred in connection with any claim, proceeding, or action;
(2) The amount of, and the cost incurred in connection with, any settlement of any claim, proceeding, or action; and
(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

\* \* \* \* \*

Payment, as set forth in the definition of the term "prohibited indemnification payment," includes—

- (1) Any direct or indirect transfer of any funds or any asset; and
(2) Any segregation of any funds or assets for the purpose of making, or

pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

- (i) The determination, after such date, of the liability for the payment of such amount; or
(ii) The liquidation, after such date, of the amount of such payment.

Prohibited indemnification payment.

(1) The term prohibited indemnification payment means any payment (or any agreement to make any payment) by any regulated entity for the benefit of any person who is or was an entity-affiliated party, to pay or reimburse such person for any civil money penalty or judgment resulting from any administrative or civil action instituted by FHFA, or for any other liability or legal expense with regard to any administrative proceeding or civil action instituted by FHFA that results in a final order or settlement pursuant to which such person:

- (i) Is assessed a civil money penalty;
(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the regulated entity; or
(iii) Is required to cease and desist from or take any affirmative action described in section 1371 of the Act (12 U.S.C. 4631) with respect to the regulated entity.

(2) Exceptions.

(i) The term prohibited indemnification payment shall not include any reasonable payment by a regulated entity that is used to purchase any commercial insurance policy or fidelity bond, provided that such insurance policy or fidelity bond shall not be used to pay or reimburse an entity-affiliated party for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by FHFA, but may pay any legal or professional expenses incurred in connection with such proceeding or action or the amount of any restitution to the regulated entity or receiver.

(ii) The term prohibited indemnification payment shall not include any reasonable payment by a regulated entity that represents partial indemnification for legal or professional expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the entity-affiliated party has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty, unless the administrative proceeding or civil

action has resulted in a final prohibition order against the entity-affiliated party.

(iii) The term prohibited indemnification payment shall not include a payment by a regulated entity for a civil money penalty under section 1376(b)(1) and (2) of the Act (12 U.S.C. 4636(b)(1) and (2)) where the regulated entity has been placed in conservatorship.

4. Section 1231.4 is added to read as follows:

§ 1231.4 Indemnification payments.

(a) Scope. (1) This section applies only after an administrative proceeding or civil action has been instituted by FHFA through issuance of a notice of charges under regulations issued by the Director.

(2) The provisions of this section shall remain in full force and effect with respect to a regulated entity that is in conservatorship.

(b) Prohibited indemnification payments. No regulated entity shall make or agree to make any prohibited indemnification payment, except as provided in this part.

(c) Permissible indemnification payments. (1) A regulated entity may make or agree to make reasonable indemnification payments to an entity-affiliated party with respect to an administrative proceeding or civil action initiated by the FHFA, including payment for a civil money penalty pursuant to § 1231.2(l)(2)(iii), if:

(i) The board of directors of the regulated entity, in good faith, determines in writing after due investigation and consideration that the entity-affiliated party acted in good faith and in a manner he or she believed to be in the best interests of the regulated entity;

(ii) The board of directors of the regulated entity, in good faith, determines in writing after due investigation and consideration that such payments will not materially adversely affect the safety and soundness of the regulated entity;

(iii) The indemnification payments do not constitute prohibited indemnification payments as that term is defined in § 1231.2(l); and

(iv) The entity-affiliated party agrees in writing to reimburse the regulated entity, to the extent not covered by payments from insurance or bonds purchased pursuant to § 1231.2(l)(2), for that portion of any advanced indemnification payments that subsequently become prohibited indemnification payments, as defined in § 1231.2(l).

(2) An entity-affiliated party requesting indemnification payments

shall not participate in any way in the board's discussion and approval of such payments; provided, however, that such entity-affiliated party may present his or her request to the board of directors and respond to any inquiries from the board of directors concerning his or her involvement in the circumstances giving rise to the administrative proceeding or civil action.

(3) In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in paragraph (c)(1) of this section have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

(4) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (c)(1) of this section have been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

5. Section 1231.6 is added to read as follows:

**§ 1231.6 Applicability in the event of receivership.**

The provisions of this part, or any consent or approval granted under the provisions of this part by the FHFA, shall not in any way bind any receiver of a regulated entity in receivership. Any consent or approval granted under the provisions of this part by the FHFA shall not in any way obligate the FHFA or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification, or other agreement. Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when a receiver is appointed for any regulated entity, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such receiver. Nothing in

this part may be construed to permit the payment of salary or any liability or legal expense of an entity-affiliated party contrary to section 1318(e)(3) of the Act (12 U.S.C. 4518(e)(3)).

Dated: November 5, 2008.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

[FR Doc. E8-26831 Filed 11-13-08; 8:45 am]

**BILLING CODE 8070-01-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-1131; Directorate Identifier 2008-NE-37-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Pratt & Whitney (PW) Models PW2037, PW2037(M), and PW2040 Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for PW models PW2037, PW2037(M), and PW2040 turbofan engines. This proposed AD would require inspecting all high-pressure turbine (HPT) 2nd stage hubs at the next HPT overhaul after the effective date of the proposed AD. The inspections of the hubs include fluorescent penetrant inspection (FPI) for cracks and an optical comparator inspection (OCI) of the blade retention slots to confirm the hubs are within dimensional tolerances before returning them to service. This proposed AD results from an uncontained release of HPT 2nd stage blades and blade retention lugs. We are proposing this AD to detect cracks and remove nonconforming HPT 2nd stage hubs, which could result in an uncontained release of turbine blades and blade retention lugs, and damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by January 13, 2009.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *Federal Rulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

Contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108 for the service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [mark.riley@faa.gov](mailto:mark.riley@faa.gov); telephone (781) 238-7758, fax (781) 238-7199.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2008-1131; Directorate Identifier 2008-NE-37-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

##### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The