

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590-AA08

Golden Parachute and Indemnification Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing an amendment to the final Golden Parachute Payments regulation that was published in the **Federal Register** on January 29, 2009. This proposed amendment addresses prohibited and permissible golden parachute payments to entity-affiliated parties in connection with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (regulated entities) as well as the Office of Finance. It also sets forth prohibited and permissible indemnification payments that regulated entities and the Office of Finance may make to an entity-affiliated party in connection with administrative proceedings or civil actions instituted by FHFA.

DATES: Written comments on the proposed amendment must be received on or before July 29, 2009. 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 Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, 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, 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, may be sent by e-mail at 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. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency. Please include "RIN 2590-AA08" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Alfred M. Pollard, General Counsel, (202) 414-3788 (not a toll free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed amendment and will take all comments into consideration before issuing the final regulation. FHFA previously requested comments on a proposed amendment, addressing indemnification payments, to the Golden Parachute Payments regulation that was published on November 14, 2008 (73 FR 67424). Comments received in response to the November 14, 2008 publication will be considered along with comments received in response to this amendment.

Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA 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

A. General 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.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.¹ FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (FHLBanks) (collectively, 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 Safety and Soundness Act and rules, regulation, guidelines, and orders issued under the Safety and Soundness Act, and their respective authorizing statutes; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and that the activities and operations of the regulated entities are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance of the Federal Home Loan Bank System.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) will be abolished one year after enactment of HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB until such regulations are superseded by regulations promulgated by FHFA.

B. Rulemaking Background

Section 1114 of HERA amended section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) to provide explicit authorities to FHFA in addressing golden parachute payments and indemnification payments. FHFA published the interim final regulation on Golden Parachute and Indemnification Payments in the

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

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). On November 14, 2008 (73 FR 67424), FHFA published a proposed amendment to the interim final regulation in the **Federal Register**, which addressed indemnification payments. The public notice and comment period closed on December 29, 2008. On January 29, 2009 (74 FR 5101), FHFA published the final regulation on Golden Parachute Payments.

FHFA is proposing an amendment to the final Golden Parachute Payments regulation that would address in more detail prohibited and permissible golden parachute payments. FHFA believes it is useful to provide an opportunity to the public to read and comment on both the proposed golden parachute payments and indemnification payments amendments in context. Therefore, this proposed amendment also contains a re-proposal of the indemnification payments amendment that was first proposed on November 14, 2008.

III. Office of Finance

Section 1114 of HERA amended section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) by providing FHFA with additional authorities in addressing golden parachute and indemnification payments made by the regulated entities. The Office of Finance is a joint office of the FHLBanks that was established by a predecessor to FHFA. The Office of Finance is governed by a three-person board of directors consisting of two FHLBank presidents and one independent member. Under the regulations of FHFBA, the Office of Finance is subject to the same regulatory oversight authority and enforcement powers as are the FHLBanks and their respective directors, officers, and employees.² The Office of Finance also is subject to the cease-and-desist authority of FHFA, and its directors, officers and management are subject to the removal and prohibition authority of FHFA.³ Although the Office of Finance is not directly covered by section 1318(e), it is subject to the Director's "general regulatory authority" under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)), as amended by HERA. The Director is

required to exercise that authority as necessary to ensure that the purposes of the Safety and Soundness Act, the authorizing statutes, and other applicable law are carried out.

Because of the unique nature of the Office of Finance and the interrelationship between it and the FHLBanks, FHFA believes that the purposes underlying the limitations on golden parachute and indemnification payments can best be carried out if the limitations are consistent between the FHLBanks and the Office of Finance, their joint office. Therefore, based on its general regulatory authority over the Office of Finance, FHFA is proposing that the amendment would apply to the Office of Finance.

IV. Golden Parachute Payments

FHFA published a final regulation, Golden Parachute Payments in the **Federal Register** on January 29, 2009 (74 FR 5101). The final Golden Parachute Payments regulation addressed public comment on factors the Director would consider in acting on golden parachute payments. As stated in the preamble of the final regulation, comments received that addressed other elements of a golden parachute regulation would be considered by FHFA in subsequent rulemaking for public comment. Specifically, in response to comments received, it was stated that FHFA would consider adding provisions similar to those of the Federal Deposit Insurance Corporation (FDIC) golden parachute regulation in the subsequent rulemaking. The FDIC regulation describes more specifically benefits included or excluded from the term "golden parachute payment." Thus, the provisions of the proposed amendment addressing golden parachute payments are substantially similar to the FDIC regulation that limits golden parachute payments by insured depository institutions to institution-affiliated parties.⁴

The proposed amendment would describe prohibited and permissible golden parachute payments that a regulated entity or the Office of Finance may make to an entity-affiliated party. The term "entity-affiliated party" is statutorily defined under the Safety and Soundness Act to include any "officer" of the regulated entity.⁵ The term "officer" for purposes of the Director's oversight of golden parachute payments has broader coverage than the term "executive officer" as defined in section 4502(12) of the Safety and Soundness Act (12 U.S.C. 4502(12)) with respect to

the Director's authority to prohibit and withhold executive compensation under section 1318(a) of the Safety and Soundness Act (12 U.S.C. 4518(a)).

In proposing the amendment, FHFA recognizes that prior to the enactment of HERA, the regulated entities or the Office of Finance may have entered into agreements that provide for golden parachute payments beyond that which is proposed to be permissible under section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) and the proposed amendment. FHFA intends that the proposed amendment would apply to agreements entered into by a regulated entity or the Office of Finance with an entity-affiliated party on or after the date the regulation is effective.

V. Indemnification Payments

The proposed amendment would describe prohibited and permissible indemnification payments that a regulated entity and the Office of Finance 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 FDIC regulation that limits indemnification by insured depository institutions to institution-affiliated parties.⁶

The proposed amendment is substantially similar to the proposed amendment addressing indemnification payments published in the **Federal Register** on November 14, 2008 (73 FR 67424). FHFA received seven comment letters and will consider those comment letters with comments received in response to this proposed rulemaking.

In proposing the amendment, FHFA recognizes that prior to the enactment of HERA, the regulated entities or the Office of Finance may have entered into indemnification agreements that provide for indemnification beyond that which is proposed to be permissible under section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) and the proposed amendment. FHFA intends that the proposed amendment would apply to agreements entered into by a regulated entity or the Office of Finance with an entity-affiliated party on or after the date the regulation is effective.

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 or the Office of Finance from indemnifying an entity-affiliated

² 12 CFR 985.4 and 985.7.

³ 12 U.S.C. 4631(a) and 4636a(a).

⁴ The FDIC regulation is found at 12 CFR part 359.

⁵ 12 U.S.C. 4502(11).

⁶ 12 CFR part 359.

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.

VI. Differences Between FHLBanks and Enterprises

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the FHLBanks, to consider the differences between the FHLBanks and the Enterprises with respect to the FHLBanks' 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 FHLBanks 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 FHLBanks.

Regulatory Impact

Paperwork Reduction Act

The proposed amendment does not contain any information collection requirement that requires the approval of the Office of Management and Budget 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). FHFA has considered the impact of the proposed amendment under the Regulatory Flexibility Act. 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 proposed amendment 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.

Accordingly, for reasons stated in the preamble, under the authority of 12 U.S.C. 4518(e) and 4526, FHFA proposes to amend part 1231 of subchapter B of title 12 CFR Chapter XII as follows:

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. The heading to part 1231 is revised to read as set forth above.

3. Section 1231.1 is revised to read as follows:

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Safety and Soundness 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 and the Office of Finance may make to entity-affiliated parties.

4. Section 1231.2 is amended by:

a. Removing the paragraph designations before each definition and arranging definitions in alphabetical order.

b. Removing the reserved paragraphs (l) through (n).

c. Removing the definition for the term "Act."

d. Adding definitions for the terms "Benefit plan," "Bona fide deferred compensation plan or arrangement," "Liability or legal expense," "Nondiscriminatory," "Payment," "Prohibited indemnification payment," and "Safety and Soundness Act" in alphabetical order.

e. Revising the definition for the terms "Entity-affiliated party," "Golden parachute payment," and "Troubled condition."

The additions and revisions read as follows:

§ 1231.2 Definitions.

* * * * *

Benefit plan means any plan, contract, agreement, or other arrangement which is an "employee welfare benefit plan" as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or cafeteria plans; provided however, that such term shall not include any plan intended to be subject to paragraphs (2)(iii) and (v) of the term *golden parachute payment* as defined in this section.

Bona fide deferred compensation plan or arrangement means any plan, contract, agreement or other arrangement whereby:

(1) An entity-affiliated party voluntarily elects to defer all or a portion of the reasonable compensation, wages or fees paid for services rendered which otherwise would have been paid to such party at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals) and the regulated entity or the Office of Finance either:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of such trust may be available to satisfy claims of creditors of the regulated entities or the Office of Finance in the case of insolvency; or

(2) A regulated entity or the Office of Finance establishes a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (1) of this definition:

(i) Primarily for the purpose of providing benefits for certain entity-affiliated parties in excess of the limitations on contributions and benefits imposed by sections 401(a)(17), 402(g), 415, or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 401(a)(17), 402(g), 415); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees (excluding severance payments described in paragraph (2)(v) of the term *golden parachute payment* as defined in this section and

permissible golden parachute payments described in § 1231.3(b); and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (1) and (2) of this definition, the following requirements shall apply:

(i) The plan was in effect at least one year prior to any of the events described in paragraph (1)(ii) of the term *golden parachute payment* as defined in this section;

(ii) Any payment made pursuant to such plan is made in accordance with the terms of the plan as in effect no later than one year prior to any of the events described in paragraph (1)(ii) of the term *golden parachute payment* as defined in this section and in accordance with any amendments to such plan during such one-year period that do not increase the benefits payable thereunder;

(iii) The entity-affiliated party has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under such plan;

(iv) Benefits under such plan are accrued each period only for current or prior service rendered to the employer (except that an allowance may be made for service with a predecessor employer);

(v) Any payment made pursuant to such plan is not based on any discretionary acceleration of vesting or accrual of benefits which occurs at any time later than one year prior to any of the events described in paragraph (1)(ii) of the term *golden parachute payment* as defined in this section;

(vi) The regulated entity or the Office of Finance has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of such trust may be available to satisfy claims of the regulated entity's creditors in the case of insolvency; and

(vii) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

* * * * *

Entity-affiliated party means:

(1) With respect to the Office of Finance, any director, officer, or management of the Office of Finance; and

(2) With respect to a regulated entity:

(i) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(ii) Any shareholder, affiliate, consultant, or joint venture partner of a

regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;

(iii) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if:

(A) The independent contractor knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice; and

(B) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(iv) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(v) The Office of Finance.

* * * * *

Golden parachute payment means:

(1) Any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity or the Office of Finance for the benefit of any current or former entity-affiliated party pursuant to an obligation of such regulated entity or the Office of Finance that:

(i) Is contingent on, or by its terms is payable on or after, the termination of such party's primary employment or affiliation with the regulated entity or the Office of Finance; and

(ii) Is received on or after, or is made in contemplation of, any of the following events:

(A) The insolvency (or similar event) of the regulated entity which is making the payment;

(B) The appointment of any conservator or receiver for such regulated entity; or

(C) A determination by FHFA that the regulated entity is in a troubled condition; or

(D) The Enterprise is assigned a composite rating of "Significant Concerns" or "Critical Concerns" by FHFA, or the Federal Home Loan Bank or the Office of Finance is assigned a composite rating of 3 or 4 by FHFA.

(2) *Exceptions*. The term *golden parachute payment* shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a

reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country;

(ii) Any payment made pursuant to a "benefit plan" as that term is defined in this section;

(iii) Any payment made pursuant to a bona fide deferred compensation plan or arrangement as that term is defined in this section;

(iv) Any payment made by reason of death or by reason of termination caused by the disability of an entity-affiliated party; or

(v) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement which provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement; provided, however, that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the 12 months (or such longer period or greater benefit as the Director shall consent to) immediately preceding termination of employment, resignation, or early retirement, and such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or scope of severance benefits at a time when the regulated entity or the Office of Finance is in a condition specified in paragraph (1)(ii) of the term *golden parachute payment* as defined in this section or in contemplation of such a condition without the prior written consent of the Director; or

(vi) Any severance or similar payment which is required to be made pursuant to a State statute or foreign law which is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria); or

(vii) Any other payment which the director determined to be permissible in accordance with § 1231.3(b).

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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 actions; 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.

Nondiscriminatory means that the plan, contract, or arrangement in question applies to all employees of a regulated entity or the Office of Finance who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract, or arrangement may provide different benefits based only on objective criteria such as salary, total compensation, length of service, job grade, or classification, which are applied on a proportionate basis (with a variance in severance benefits relating to any criterion of plus or minus ten percent) to groups of employees consisting of not less than the lesser of 33 percent of employees or 1,000 employees.

* * * * *

Payment means:

- (1) Any direct or indirect transfer of any funds or any asset;
- (2) Any forgiveness of any debt or other obligation;
- (3) The conferring of any benefit, including but not limited to stock options and stock appreciation rights; and
- (4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, 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 means:

- (1) Any payment (or any agreement to make any payment) by any regulated entity or the Office of Finance for the benefit of any current or former 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 such administrative proceeding or civil action 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 the Office of Finance; or

- (iii) Is required to cease-and-desist from or take any affirmative action described in section 1371 of the Safety and Soundness 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 or the Office of Finance 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 the receiver or to the Office of Finance.

(ii) The term *prohibited indemnification payment* shall not include any reasonable payment by a regulated entity or the Office of Finance 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, 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 under section 1377 of the Safety and Soundness Act (12 U.S.C. 4636a).

(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 Safety and Soundness Act (12 U.S.C. 4636(b)(1) and (2)) where the regulated entity has been placed in conservatorship.

* * * * *

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended.

Troubled condition means a regulated entity that:

- (1) Is subject to a cease-and-desist order or written agreement issued by FHFA that requires action to improve the financial condition of the regulated entity or is subject to a proceeding initiated by the Director, which contemplates the issuance of an order that requires action to improve the financial condition of the regulated entity, unless otherwise informed in writing by FHFA; or

- (2) Is informed in writing by the Director that it is in a troubled condition for purposes of the requirements of this part on the basis of the most recent report of examination or other information available to FHFA.

5. Section 1231.3 is added to read as follows:

§ 1231.3 Golden parachute payments.

(a) *Prohibited golden parachute payments.* No regulated entity or the Office of Finance shall make or agree to make any prohibited golden parachute payment, except as provided in this part.

(b) *Permissible golden parachute payments.* (1) A regulated entity or the Office of Finance may agree to make or may make a golden parachute payment if and to the extent that:

(i) The Director determines that such a payment or agreement is permissible; or

(ii) Such an agreement is made in order to hire a person to become an entity-affiliated party either at a time when the regulated entity or the Office of Finance satisfies or in an effort to prevent it from imminently satisfying any of the criteria set forth in paragraph (1)(ii) of the term *golden parachute payment* as defined in § 1231.2, and the Director consents in writing to the amount and terms of the golden parachute payment. Such consent by the Director shall not improve the entity-affiliated party's position in the event of the insolvency of the regulated entity since such consent can neither bind a receiver nor affect the provability of receivership claims; or

(iii) Such a payment is made pursuant to an agreement which provides for a reasonable severance payment, not to exceed 12 months salary, to an entity-affiliated party in the event of a change in control of the regulated entity; provided, however, that a regulated entity shall obtain the consent of the Director prior to making such a payment and this paragraph (b)(1)(iii) shall not apply to the regulated entity being placed into conservatorship or receivership; and

(iv) A regulated entity or the Office of Finance making a request pursuant to paragraphs (b)(1)(i) through (iii) of this section shall demonstrate that it does not possess and is not aware of any information, evidence, documents, or other materials that would indicate that there is a reasonable basis to believe, at the time such payment is proposed to be made, that:

(A) The entity-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the

regulated entity or the Office of Finance that is likely to have a material adverse effect on the regulated entity or the Office of Finance;

(B) The entity-affiliated party is substantially responsible for the insolvency of, the appointment of a conservator or receiver for, or the troubled condition of the regulated entity;

(C) The entity-affiliated party has materially violated any applicable Federal or State law or regulation that has had or is likely to have a material effect on the regulated entity or the Office of Finance; and

(D) The entity-affiliated party has violated or conspired to violate section 215, 657, 1006, 1014, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a "financial institution" as the term is defined in title 18 of the United States Code (18 U.S.C. 20).

(2) In making a determination under paragraphs (b)(1)(i) through (iii) of this section, the Director may consider:

(i) Whether, and to what degree, the entity-affiliated party was in a position of managerial or fiduciary responsibility;

(ii) The length of time the entity-affiliated party was affiliated with the regulated entity or the Office of Finance, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(iii) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation order or written agreement, and the level of willful misconduct, breach of fiduciary duty, and malfeasance on the part of the entity-affiliated party.

6. 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.

(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 or the Office of Finance shall make or agree to make any prohibited indemnification payment, except as provided in this part.

(c) *Permissible indemnification payments.* (1) A regulated entity or the

Office of Finance 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 FHFA, including payment for a civil money penalty pursuant to paragraph (2)(iii) of the definition of the term *prohibited indemnification payment* in § 1231.2 if:

(i) The board of directors of the regulated entity or the Office of Finance, 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 reasonably believed to be in the best interests of the regulated entity.

(ii) The board of directors of the regulated entity or the Office of Finance, 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 or the Office of Finance;

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

(iv) The entity-affiliated party agrees in writing to reimburse the regulated entity or the Office of Finance, to the extent not covered by payments from insurance or bonds purchased pursuant to paragraph (2)(i) of the definition of the term *prohibited indemnification payment* in § 1231.2, for that portion of any advanced indemnification payments that subsequently become "prohibited indemnification payments," as such term is defined in § 1231.2.

(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.

7. Section 1231.5 is revised to read as follows:

§ 1231.5 Applicability in the event of receivership.

The provisions of this part, or any consent or approval granted under the provisions of this part by 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 FHFA shall not in any way obligate FHFA or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification, or other agreement. 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 Safety and Soundness Act (12 U.S.C. 4518(e)(3)).

8. Section 1231.6 is added to read as follows:

§ 1231.6 Filing instructions.

(a) *Scope.* This section contains the procedures to apply for the consent of the Director to make golden parachute payments under § 1231.3(b) or to make excess nondiscriminatory severance plan payments under paragraph (2)(v) of the definition of the term *golden parachute payment* in § 1231.2.

(b) *Where to file.* A Federal Home Loan Bank or Office of Finance applicant must submit a letter application to the Deputy Director of the Division of Federal Home Loan Bank Supervision. An Enterprise applicant must submit a letter application to the Deputy Director of the Division of Enterprise Regulation.

(c) *Content of filing.* The letter application must contain the following:

(1) The reasons why the regulated entity or the Office of Finance seeks to make the payment;

(2) An identification of the entity-affiliated party who will receive the payment;

(3) A copy of any contract or agreement regarding the subject matter of the filing;

(4) The cost of the proposed payment and its impact on the capital and earnings of the regulated entity;

(5) The reasons why the consent to the payment should be granted; and

(6) Certification and documentation as to each of the factors listed in § 1231.3(b)(1)(iv).

(d) *Additional information.* FHFA may request additional information at any time during the processing of the letter application.

(e) *Written notice.* FHFA shall provide the applicant with written notice of the decision as soon as it is rendered.

Dated: June 22, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9-15329 Filed 6-26-09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0294; Directorate Identifier 2009-NE-08-AD]

RIN 2120-AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500-A1, V2527E-A5, V2530-A5, and V2528-D5 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for International Aero Engines AG (IAE) V2500-A1, V2527E-A5, V2530-A5, and V2528-D5 turbofan engines. This proposed AD would require reducing the published life limit of certain high-pressure compressor (HPC) stage 9-12 disc assemblies. This proposed AD would also remove from service those HPC stage 9-12 disc assemblies using a drawdown schedule. This proposed AD results from IAE updating the low-cycle-fatigue (LCF) life analysis for certain HPC stage 9-12 disc assemblies. We are proposing this AD to prevent an uncontained failure of the HPC stage 9-12 disc assembly, resulting in an in-flight engine shutdown and possible damage to the airplane.

DATES: We must receive any comments on this proposed AD by August 28, 2009.

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

- *Federal eRulemaking 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.

FOR FURTHER INFORMATION CONTACT:

Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: mark.riley@faa.gov; telephone (781) 238-7758; fax (781) 238-7199.

Contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565-5515; fax: (860) 565-5510, for a copy of the service information identified in this proposed AD.

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-2009-0294; Directorate Identifier 2009-NE-08-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 street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

IAE Engineering updated their life analysis for certain HPC stage 9-12 disc assemblies installed in V2500-A1, V2527E-A5, V2530-A5, and V2528-D5 turbofan engines. Stress analysis calculations have shown that missing ceramic liner material affects thermal gradients at the weld joining discs stage 11 and 12. This results in an increase in the stress in the weld, which affects the life of the component. This condition, if not corrected, could result in uncontained engine failure resulting in an in-flight engine shutdown and possible damage to the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

- Reducing the published life limit of HPC stage 9-12 disc assemblies, P/N 2A3200, 2A3300, 2A3400, 2A3500, 6A4131, and 6A7545, installed in V2500-A1 engines, from 15,000 cycles-since-new (CSN) to 14,600 CSN; and
- Reducing the published life limit of HPC stage 9-12 disc assemblies, P/N 6A4156 and 6A7547, installed in V2527E-A5 and V2530-A5 engines, from 12,000 CSN to 11,800 CSN; and
- Reducing the published life limit of HPC stage 9-12 disc assemblies, P/N 6A4156 and 6A7547, installed in V2528-D5 engines, from 13,200 CSN to 11,800 CSN.

This proposed AD would also remove from service those HPC stage 9-12 disc assemblies using a drawdown schedule.

Costs of Compliance

We estimate that this proposed AD would affect 18 engines installed on airplanes of U.S. registry. We also estimate that it would take about 200 work-hours per engine to perform the proposed actions, and that the average