

# FEDERAL HOUSING FINANCE AGENCY

[No. 2009–N–02]

## Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice.

**SUMMARY:** The Federal Housing Finance Agency has adjusted the cap on average total assets that defines a “Community Financial Institution” based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U) as published by the Department of Labor (DOL). These changes took effect on January 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patricia L. Sweeney, Division of Federal Home Loan Bank Regulation, by telephone at 202–408–2872, by electronic mail at [Pat.Sweeney@fhfa.gov](mailto:Pat.Sweeney@fhfa.gov), or by regular mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006–4001.

### SUPPLEMENTARY INFORMATION:

#### I. Background

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

Effective July 30, 2008, Division A of the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008 (Reform Act), created the Federal Housing Finance Agency (FHFA) as an independent agency of the federal government. The Reform Act transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), the 12 Federal Home Loan Banks (Banks), and the Bank System’s Office of Finance (which acts as the Banks’ fiscal agent), from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) to the FHFA. The Reform Act provides for the abolishment of OFHEO and the FHFB 1 year after the date of enactment. The FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and

that they carry out their public policy missions through authorized activities. See § 1102, 122 Stat. 2663–64. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and the FHFB until the FHFA issues its own regulations. See *id.* at §§ 1302, 1312, 122 Stat. 2795, 2798.

#### B. Statutory and Regulatory Background

Section 2(10)(A) of the Federal Home Loan Bank Act (Bank Act) defines a “Community Financial Institution” (CFI) as any member that has deposits insured by the Federal Deposit Insurance Corporation and that has average total assets below a statutory cap, which cap is to be adjusted annually for inflation. See 12 U.S.C. 1422(10)(A) (as amended); 12 CFR 925.1. Section 1211(a) of the Reform Act amended the definition of “CFI” to increase the average total assets cap for CFIs from \$500 million to \$1 billion, and retained the requirement for annual inflation adjustments. This Notice announces the annual CPI–U adjustment for the CFI asset cap, effective January 1, 2009, as further discussed below. Section 1202 of the Reform Act also removed the annual compensation limits and CPI–U adjustment requirement in former section 7(i)(2) of the Bank Act for members of the boards of directors of the Banks. See 12 U.S.C. 1427(i)(2) (as amended); 12 CFR 918.3(a). As a result, this Notice does not include any CPI adjustment for such limits.

#### II. Calculating the Annual Adjustment

Consistent with the practice of other federal agencies, and based on past practice of the FHFB, the annual adjustment to the CFI asset cap is based on the percentage increase in the CPI–U from November 2007 to November 2008. Specifically, the annual adjustment to the CFI asset cap reflects the percentage by which the CPI–U published for November of the preceding calendar year exceeds the CPI–U published for November of the year before the preceding calendar year.

The DOL encourages use of CPI–U data that have not been seasonally adjusted in “escalation agreements” because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to 5 years following the original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the FHFA is continuing the practice of the FHFB in using data that have not been seasonally adjusted.

As noted above, the Reform Act raised the CFI asset cap to \$1 billion, effective July 30, 2008, the date of enactment. Because the FHFA believes that there are benefits to the Banks and their members from retaining the FHFB’s practice of scheduling the annual adjustments to take effect as of the first of each year, it has decided to continue that practice, rather than delay the adjustment to the anniversary of the enactment of the Reform Act. Such a delay also would result in a 19 month gap between regulatory adjustments, which arguably would be contrary to the statutory requirement for annual inflation adjustments. Hence, applying the unadjusted CPI–U data results in a 1.1 percent increase in the CFI asset cap, effective as of January 1, 2009, as summarized below.

**CFI Asset Cap:** The CFI asset cap was \$625 million prior to the enactment of the Reform Act on July 30, 2008. Upon enactment of the Reform Act, the CFI asset cap automatically increased to \$1 billion. Applying the unadjusted CPI–U, the current CFI asset cap must be increased by 1.1 percent to reflect inflation over the prior year. Thus, as of January 1, 2009, the CFI asset cap is \$1,011,000,000, which amount was obtained by rounding to the nearest million, which has been the practice for all prior adjustments.

Dated: February 10, 2009.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested