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**COMMENTS OF ARMA INTERNATIONAL
REGARDING THE RECORD RETENTION PROPOSAL OF
THE FEDERAL HOUSING FINANCE AGENCY
(RIN 2590-AA10)**

OCTOBER 5, 2009

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GENERAL OBSERVATIONS

ARMA International (ARMA), the professional association of record and information managers, supports the efforts of the Federal Housing Finance Agency (“the Agency”) to propose a regime that would address the record retention requirements of each regulated entity and the Office of Finance.¹ Appropriate to the role of an effective recordkeeping program, these would be consistent with the Safety and Soundness Act requiring each regulated entity and the Office of Finance to maintain adequate records, in accordance with consistent accounting policies and practices.

Consistent with the goal of transparency and accountability that have emerged since the recent economic downturn driven by the investment banking sector, the Agency would require the regulated entities and the Office of Finance to establish and maintain a record retention program to ensure that records are readily accessible for examination and other supervisory purposes. Consistent with a core tenet of recordkeeping principles, the Agency acknowledges “that the effectiveness of the examination process is dependent upon the prompt production of complete and accurate records”. ARMA has long asserted that effective regulatory oversight depends on the guarantee that records will be reliable and authentic, that recordkeeping policies and procedures are endorsed by senior management, valued as an enterprise-wide proposition, and that all recordkeeping activities are auditable. Therefore, ARMA fully agrees with the assertion that –

“FHFA, through the supervisory process, must have access to the records of a regulated entity and the Office of Finance that are necessary to determine the financial condition of the regulated entity and the Office of

¹ See 74 F.R. 38559 (August 4, 2009) (“Notice”).

Finance or the details or the purpose of any transaction that may have a material effect on the financial condition of the regulated entity and the Office of Finance.”

Furthermore, consistent with another core tenet of recordkeeping principles, appropriately established recordkeeping programs allow the organization “to manage more effectively its business and detect improper behavior that might cause financial damage” and provide appropriate documentation of a regulated entity’s “business activities or transactions”. We note that such recordkeeping programs ensure that not only regulators, but also an organization’s business partners, investors, and customers have assurances that records are properly and appropriately created, used, managed, and disposed of.

ARMA further notes the acknowledgement of effective recordkeeping programs by Congress and other federal regulators.² Those regimes established under Gramm-Leach-Bliley, Sarbanes-Oxley and the FACT Act anticipate that covered entities will have safeguards and appropriate records disposal policies in place. Sarbanes-Oxley added criminal penalties regarding the destruction of evidentiary material such as records. Furthermore, the Federal Rules of Evidence and the Supreme Court have spoken to the importance of sound recordkeeping.

The Federal Rules of Evidence, Rule 806 speaks to the principle of records integrity:

“The following are not excluded by the hearsay rule . . . : (6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses . . . *unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.*” [emphasis added]

The U.S. Supreme Court has spoken to the principle that recordkeeping programs must ensure compliance – which says a “recordkeeping program shall be constructed to comply with applicable laws and other binding authorities, as well as the organization’s policies.” In *Shapiro v. United States*, 335 U.S. 1 (S. Ct. 1947), quoting the United States Senate Committee on Banking and Currency, the Court has said this about the importance of legally mandated recordkeeping requirements: “[N]o investigatory power can be effective without the right to insist upon the maintenance of records.” In *California Bankers Ass’n. v. Shultz*, 416 U.S. 21 (S. Ct. 1974), the Court observed: “[There is] a sufficient relation between [the banking industry] and the public concern so that the Government can constitutionally regulate or forbid the basic activity concerned, and can constitutionally require the keeping of particular records, subject to inspection.”

SPECIFIC COMMENTS TO PROPOSED RULE

² See Notice at page 38560

Section 1235.1 Purpose and Scope

The Agency articulates the purpose and scope as “to set forth minimum requirements in connection with the record retention program of each regulated entity and the Office of Finance” so as to “ensure that complete and accurate records of each regulated entity and the Office of Finance are readily accessible by FHFA for examination and other supervisory purposes.”

As indicated in our general observations above, ARMA confirms the public policy imperative in establishing a recordkeeping regime based on generally accepted recordkeeping principles.

ARMA recommends that the purpose and scope statement speak to principle-based recordkeeping programs, more broadly acknowledging the importance of appropriate recordkeeping for regulated entities.

Section 1235.2 Definitions

Consistent with generally accepted recordkeeping principles, ARMA suggests the following modifications to the proposed definitions:

Relative to the definition for “Inactive record”, we suggest that the definition include the anticipated retention period. Records that may be “seldom used” – in whatever format – must still be subject to generally accepted recordkeeping principles, and so should have clearly defined retention periods. We suggest the following modification –

Inactive record would be defined as a record that is seldom used but must be retained by a regulated entity and the Office of Finance for fiscal, legal, historical, or vital records purposes. **In all cases, an inactive record shall have a clearly defined retention period consistent with the organization’s record retention schedule.**

ARMA recommends that the record retention schedule of the organization anticipate a record hold. *Record hold* would be defined as a requirement, an order, or a directive from a regulated entity, the Office of Finance or FHFA that the regulated entity or the Office of Finance is to retain records relating to a particular issue in connection with an actual or a potential FHFA examination, investigation, enforcement proceeding, or litigation of which the regulated entity and the Office of Finance has received notice from FHFA. We suggest the following modification –

Record retention schedule would be defined as a schedule that details the categories of records a regulated entity or the Office of Finance is required to retain and the corresponding retention periods. The record retention schedule includes all media, such as microfilm and machine-readable computer records, for each record category. Reproductions are also included for each record category if the original of the official record is not available. **The record retention schedule shall define the policies and**

procedures to be followed relative to access, safeguards, disposition, and record holds.

Relative to the definition for “Vital records”, we suggest that the definition include the appropriate retention period. Vital records – in whatever format – must be subject to generally accepted recordkeeping principles, and so should have clearly defined retention periods. We suggest the following modification –

Vital records would be defined as records that are needed to meet operational responsibilities of a regulated entity or the Office of Finance under emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of a regulated entity or the Office of Finance. Emergency operating records are the type of vital records essential to the continued functioning or reconstitution of a regulated entity or the Office of Finance during and after an emergency. A vital record may be both an emergency operating record and a legal and financial rights record. **In all cases, a vital record shall have a clearly defined retention period consistent with the organization’s record retention schedule.**

Relative to the definition for “Retention period”, ARMA notes that every record or class of records must be assigned a retention schedule. ARMA recommends that the definition include reference to the enterprise-wide records retention schedule – as this will inform how retention schedules are assigned and document how records are used, accessed and disposed of at the appropriate time. We suggest the following modification

Retention period would be defined as the length of time that records must be kept before they are destroyed, **as determined by the organization’s record retention schedule.** Records not authorized for destruction have a retention period of “permanent.”

Section 1235.3 Establishment and Evaluation of Record Retention Program

The Agency would require each regulated entity and the Office of Finance to establish and maintain a written record retention program and provide a copy of such program to the Deputy Director of the Division of Enterprise Regulation and the Deputy Director of the Division of Federal Home Loan Bank Regulation, or his or her designee (Deputy Director), as appropriate, within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made. It would also require management of the regulated entity and the Office of Finance to evaluate in writing the adequacy and effectiveness of the record retention program at least every three years and provide a copy of the evaluation to the board of directors and the appropriate Deputy Director.

ARMA would urge the Agency to consider a more comprehensive vision of recordkeeping and put into place a set of principles upon which any recordkeeping program could be built and measured against. ARMA has identified eight core principles of recordkeeping, generally accepted among those practitioners in the field of

recordkeeping as essential to ensuring desired outcomes relative to managing records, as may be required by law, regulators, contractual obligations, or business imperatives. These generally accepted recordkeeping principles are described more fully below; however, for purposes of proposed section 1253.3, they may be described as those principles, when taken together, address the accountability, transparency, and compliance of any recordkeeping program, and the integrity, protection, availability, retention, and disposition of those records in possession, whether required by law or regulation or by business imperative.

ARMA would emphasize the importance of being able to audit any set of policies and procedures, and therefore further recommends periodic internal auditing that would be a part of any evaluation the regulated entities may be required to report to the Agency.

Therefore, we respectfully recommend the following modifications to the proposal:

§ 1235.3 Establishment and evaluation of record retention program.

- (a) *Establishment.* Each regulated entity and the Office of Finance shall establish and maintain a written record retention program **that addresses the accountability, transparency, and compliance of any recordkeeping program, and the integrity, protection, availability, retention, and disposition of those records in possession, and which shall be audited at least annually,** and provide a copy of such program to the Deputy Director of the Division of Enterprise Regulation, or his or her designee, or the Deputy Director of the Division of Federal Home Loan Bank Regulation, or his or her designee (Deputy Director), as appropriate, within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made.
- (b) *Evaluation.* Management of each regulated entity and the Office of Finance shall evaluate in writing the adequacy and effectiveness of the record retention program at least every three years and provide a copy of the evaluation to the board of directors and the appropriate Deputy Director. Such evaluation shall include the results of annual audits of the program.

Section 1235.4 Minimum Requirements of Record Retention Program

The Agency proposes to identify the minimum requirements for the record retention program of each regulated entity and the Office of Finance, including requirements relating to a record retention schedule. ARMA supports this approach as it acknowledges the need of regulated entities, in dialogue with their regulators, to determine the details appropriate for each type of record. ARMA recommends that the Agency considers a principles-based approach, defining those core drivers that will ensure that records are appropriately managed and have applied to them consistent and appropriate disposition schedules. The Agency properly identifies goals of ensuring that records are “complete and accurate”, that the recordkeeping program appropriately assigns “authorities and

responsibilities”, contains adequate “security and internal controls”, and that the records format and retention period comply with applicable law, permit “ready access”.

ARMA recommends that the minimum requirements be based on the following eight principles:

1. Accountability: An organization shall assign a senior executive who will oversee a recordkeeping program and delegate program responsibility to appropriate individuals, adopt policies and procedures to guide personnel, and ensure program auditability.

- The senior executive in charge should establish a method to design and implement a structure to support the recordkeeping program.
- Governance structure should be established for program development and implementation.
- Necessary components include an accountable person and a developed program.
- A recordkeeping program should have documented and approved policies and procedures to guide its implementation.
- Auditability enables the program to validate its mission and be updated as appropriate.

Auditability is the process designed to prove the program is accomplishing its goals, while seeking areas for improvement to further protect the organization and its records.

- Staff should be able to demonstrate program awareness.
- Records should be retained for the right amount of time and disposed of when no longer required.
- Policies should be kept up-to-date and cover all records media.
- Auditing should verify the status of complying with these standards.

We find this principle supporting the stated goal: “(3) Assign in writing the authorities and responsibilities for record retention activities”.

We also find this principle supports the requirement for a training program:

(b) *Training.* The record retention program shall provide for training of and notice to all employees on a periodic basis on their record retention responsibilities, including instruction regarding penalties provided by law for the unlawful removal or destruction of records. The record retention program also shall provide for training for the agents or independent contractors of a regulated entity or the Office of Finance, as appropriate, consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance.

2. Integrity: A recordkeeping program shall be constructed so the records and information generated or managed by or for the organization have a reasonable and

suitable guarantee of authenticity and reliability.

Integrity of a record is directly related to the ability to prove that a record is authentic and unaltered.

Authenticity requires proof that a document comes from the person, organization, or other legal entity claiming to be its author or authorizing authority.

An organization's executives are ultimately responsible for business records, as they are strategic and operational assets. Proper corporate governance and integrity of the information are important, and it is necessary to maintain the authenticity of records in all media over time. Investors and government regulators alike should expect the integrity of an organization's records and information.

Integrity of records in a recordkeeping environment should include the following:

- Correctness of and adherence to the policies and procedures of the organization
- Reliability of the information management training and direction given to the employees who interact with all systems
- Reliability of the records created
- An acceptable audit trail
- Reliability of the systems that control the recordkeeping including hardware, network infrastructure, and software

We find this principle supporting the stated goal: “(1) Be reasonably designed to assure that retained records are complete and accurate”.

The principle also supports the stated goal –

- “(2) Be reasonably designed to assure that the format of retained records and the retention period—
 - (i) Are adequate to support litigation and the administrative, business, external and internal audit functions of the regulated entity or the Office of Finance;
 - (ii) Comply with requirements of applicable laws and regulations; and
 - (iii) Permit ready access by the regulated entity or the Office of Finance and, upon request, by the examination and other staff of FHFA by reasonable means, consistent with the nature and availability of the records and existing information technology.”.

3. Protection: A recordkeeping program shall be constructed to ensure a reasonable level of protection to records and information that are private, confidential, privileged, secret, or essential to business continuity.

We find this principle supporting the stated goal: “(6) Include adequate security and internal controls to protect records from unauthorized access and data alteration”.

We also find this principle supporting the stated goal: “(7) Provide for adequate back-up and recovery of electronic records”.

4. Compliance: The recordkeeping program shall be constructed to comply with applicable laws and other binding authorities, as well as the organization’s policies.

It is the duty of every organization to comply with applicable laws, including those for maintaining records. An organization’s credibility and legal standing rest upon its ability to demonstrate that it conducts its activities in a lawful manner. The absence or poor quality of the records required to demonstrate this damages an organization’s credibility and may impair its standing in legal matters or jeopardize its right to conduct business.

The duty of compliance affects a recordkeeping system in two ways:

1. The recordkeeping system must contain information showing that the organization’s activities are conducted in a lawful manner.
2. The recordkeeping system is itself subject to legal requirements such as requirements to maintain tax or other records.

It follows from this that every organization must:

- Know what information must be entered into its records to demonstrate that its activities are being conducted in a lawful manner
- Enter that information into its records in the manner prescribed by law
- Maintain its records in the manner and for the time prescribed by law

We find this principle supporting the stated goal –

“(2) Be reasonably designed to assure that the format of retained records and the retention period—
(i) Are adequate to support litigation and the administrative, business, external and internal audit functions of the regulated entity or the Office of Finance;
(ii) Comply with requirements of applicable laws and regulations; and
(iii) Permit ready access by the regulated entity or the Office of Finance and, upon request, by the examination and other staff of FHFA by reasonable means, consistent with the nature and availability of the records and existing information technology.”.

5. Availability: An organization shall maintain records in a manner that ensures timely, efficient, and accurate retrieval of needed information.

Successful and responsible organizations must have the ability to identify, locate, and retrieve the records and related information required to support its ongoing business activities. These records are used by:

- Individuals and groups to reference, share, and support their work
- Legal and compliance for discovery and regulatory review purposes
- Numerous corporate functions to validate management decisions and account for the resources of the organization.

Having the right information available at the right time depends upon an organization's ability to nimbly search through enormous volumes of information.

We find this principle supporting the stated goal: “(4) Include policies and procedures concerning record holds, consistent with § 1235.5”.

We also find this principle supporting the stated goal: “(5) Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, and operational and business requirements”.

6. Retention: An organization shall maintain its records and information for an appropriate time, taking into account legal, regulatory, fiscal, operational, and historical requirements.

Organizations make retention decisions based on the content and purpose of records. Retention periods are determined by following these requirements:

- **Legal and regulatory** – Federal, state, local, and even international laws mandate the retention of records and information for a specific period of time. To comply with these extensive laws and regulations, an organization must conduct legal research in consultation with legal counsel to determine all records retention requirements. Laws and regulations establish the minimum retention period for those records to which they pertain. Failure to comply with laws and regulations may result in costly penalties and loss of legal rights.
- **Fiscal** – Records that have financial or tax value must be retained to ensure the timely payment of obligations and the proper receipt of receivables, as well as to support the organization's financial audits and tax returns. Legal research and consultation with legal counsel must be completed to satisfy fiscal retention requirements.
- **Operational** – Once legal, regulatory, and fiscal requirements have been established, an organization must determine how long records are needed to

- satisfy its business needs. This is usually determined by interviewing the person(s) most knowledgeable about the operational value of each record type.
- **Historical** – Records that depict the history of an organization should be preserved for the life of that organization. Examples of historical records include articles of incorporation, bylaws, charters, and board of directors’ minutes. Historical records normally constitute a very small percentage of an organization’s total records volume.

We find this principle supporting the stated goal: “(4) Include policies and procedures concerning record holds, consistent with § 1235.5”.

We also find this principle supporting the stated goal: “(5) Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, and operational and business requirements”.

7. Disposition: An organization shall provide secure and appropriate disposition for records that are no longer required to be maintained by applicable laws and the organization’s policies.

At the completion of the retention period for an organization’s records, the records must be designated for disposition. In many cases, the disposition for records will be destruction. In other cases, the records may be returned to clients, transferred to another organization in connection with a divestiture, or transferred for ongoing preservation to an historical archives, library, or museum. In all instances, the organization must make a reasonable effort to ensure that all versions and copies of the records are included in the disposition. The organization must also document its disposition process.

If records are converted or migrated to new media, disposition of the previous media may also be warranted.

Disposition of relevant records must be suspended in the event of pending or ongoing litigation or audit. The organization should designate records that are to be held pending resolution of the litigation or audit and notify all affected personnel when the hold is issued and when the hold is released.

Destruction of records must be performed in a secure manner, ensuring that records to be destroyed are transported securely and destroyed completely. The organization may choose to utilize “green” methods of destruction, but destruction must always be performed in a manner that renders the records completely and irreversibly destroyed.

We find this principle supporting the stated goal “(6) Include adequate security and internal controls to protect records from unauthorized access and data alteration”.

We also find this principle supporting the stated goal “(7) Provide for adequate back-up and recovery of electronic records”.

8. Transparency: The processes and activities of an organization’s recordkeeping program shall be documented in an understandable manner and be available to all personnel and appropriate interested parties.

We find this principle supporting the stated goal –

- “(2) Be reasonably designed to assure that the format of retained records and the retention period—
- (i) Are adequate to support litigation and the administrative, business, external and internal audit functions of the regulated entity or the Office of Finance;
 - (ii) Comply with requirements of applicable laws and regulations; and
 - (iii) Permit ready access by the regulated entity or the Office of Finance and, upon request, by the examination and other staff of FHFA by reasonable means, consistent with the nature and availability of the records and existing information technology.”.

For these reasons, ARMA recommends the following modifications to the proposed section 1235.6 –

§ 1235.4 Minimum requirements of record retention program.

(a) Requirements. The record retention program established and maintained by each regulated entity and the Office of Finance under § 1235.3 shall be based on the following principles:

- (1) The organization shall assign a senior executive who will oversee a recordkeeping program and delegate program responsibility to appropriate individuals, adopt policies and procedures to guide personnel, and ensure program auditability.**
- (2) The program shall be constructed so the records and information generated or managed by or for the organization have a reasonable and suitable guarantee of authenticity and reliability.**
- (3) The program shall be constructed to ensure a reasonable level of protection to records and information that are private, confidential, privileged, secret, or essential to business continuity.**
- (4) The program shall be constructed to comply with applicable laws and other binding authorities, as well as the organization’s policies.**
- (5) The organization shall maintain records in a manner that ensures timely, efficient, and accurate retrieval of needed information.**
- (6) The organization shall maintain its records and information for an appropriate time, taking into account legal, regulatory, fiscal, operational, and historical requirements.**

(7) The organization shall provide secure and appropriate disposition for records that are no longer required to be maintained by applicable laws and the organization's policies.

(8) The processes and activities of the program shall be documented in an understandable manner and be available to the examination and other staff of FHFA.

(b) Program Elements. The record retention program established and maintained by each regulated entity and the Office of Finance under § 1235.3 shall:

(1) Be reasonably designed to assure that retained records are complete and accurate;

(2) Be reasonably designed to assure that the format of retained records and the retention period—

(i) Are adequate to support litigation and the administrative, business, external and internal audit functions of the regulated entity or the Office of Finance;

(ii) Comply with requirements of applicable laws and regulations; and

(iii) Permit ready access by the regulated entity or the Office of Finance and, upon request, by the examination and other staff of FHFA by reasonable means, consistent with the nature and availability of the records and existing information technology.

(3) Assign in writing the authorities and responsibilities for record retention activities;

(4) Include policies and procedures concerning record holds, consistent with § 1235.5;

(5) Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, and operational and business requirements;

(6) Include adequate security and internal controls to protect records from unauthorized access and data alteration; and

(7) Provide for adequate back-up and recovery of electronic records.

(b) *Training.* The record retention program shall provide for training of and notice to all employees on a periodic basis on their record retention responsibilities, including instruction regarding penalties provided by law for the unlawful removal or destruction of records. The record retention program also shall provide for training for the agents or independent contractors of a regulated entity or the Office of Finance, as appropriate, consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance.

(c) Auditing. The recordkeeping program shall be audited at least annually, and include a means of detecting any internal or external risks to the integrity of any retention schedules, disposition schedules, means safeguarding and disposal of records.

Section 1235.5 Record Hold

The Agency proposes requirements that would address record retention methods, record access and retrieval policies, and notification procedures for employees. The Agency would require a regulated entity's or the Office of Finance's employee who is aware of a potential FHFA investigation, enforcement proceeding, or litigation involving the regulated entity or the Office of Finance or an employee to notify immediately the legal department of the regulated entity or the Office of Finance and retain any records that may be relevant to such investigation, enforcement proceeding, or litigation.

ARMA acknowledges the importance of record holds relative to investigative and regulatory proceedings, as well as litigation. These should be found in every organization's recordkeeping program.

We note that the principle of retention ("An organization shall maintain its records and information for an appropriate time, taking into account legal, regulatory, fiscal, operational, and historical requirements.") supports the requirement that the record retention program include an articulation of how employees and contractors of regulated entities will "receive prompt notification of a record hold" and how the regulated entity and the Office of Finance shall address the method by which "the regulated entity or the Office of Finance will retain records during a record hold".

Section 1235.6 Access to Records

The Agency would set forth the requirement that records must be readily available for inspection within a reasonable period upon request by FHFA, at a location acceptable to FHFA.

We note that the principle of transparency ("The processes and activities of an organization's recordkeeping program shall be documented in an understandable manner and be available to all personnel and appropriate interested parties.") supports this requirement and ensures that the regulated entity would be able to "make its records readily available for inspection and other supervisory purposes within a reasonable period upon request".

ARMA further sees nothing inconsistent with generally accepted recordkeeping principles relative to defining "a reasonable period" for purposes of responding to "requests made during the course of an onsite examination and pursuant to an examination's scope" to be "no longer than one business day" and for purposes of responding to "requests for documents made outside of an onsite examination" to be "presumed to be three business days".

Section 1235.7 Supervisory Action

The Agency proposes that failure by a regulated entity or the Office of Finance to comply with the requirements of the proposed regulation may subject the regulated entity or the Office of Finance, or its board members, officers, or employees to supervisory action by FHFA. ARMA notes that a recordkeeping program based on generally accepted recordkeeping principle will ensure that both regulated entities and regulators not only engage in transparency, but also that the records have integrity, protection, and are appropriately retained, avoiding potential issues of poor recordkeeping as well as errors. The potential for supervisory action also gives meaning to the Principle of Accountability and will help ensure that individuals in senior management know of and have endorsed the covered entity's recordkeeping program, that training is budgeted for and implemented, and that in general, the program is acknowledged and valued as a set of processes and procedures enterprise-wide.

The principles would also support the Agency's expectation that nothing in the recordkeeping program would "limit the authority of FHFA under its safety and soundness mandate to take other actions such as conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations".

CONCLUSION

ARMA recommends the following modifications relative to the proposed definitions –

1. *Inactive record* would be defined as a record that is seldom used but must be retained by a regulated entity and the Office of Finance for fiscal, legal, historical, or vital records purposes. **In all cases, an inactive record shall have a clearly defined retention period consistent with the organization's record retention schedule.**
2. *Record retention schedule* would be defined as a schedule that details the categories of records a regulated entity or the Office of Finance is required to retain and the corresponding retention periods. The record retention schedule includes all media, such as microfilm and machine-readable computer records, for each record category.
3. Reproductions are also included for each record category if the original of the official record is not available. **The record retention schedule shall define the policies and procedures to be followed relative to access, safeguards, disposition, and record holds.**
4. *Vital records* would be defined as records that are needed to meet operational responsibilities of a regulated entity or the Office of Finance under emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of a regulated entity or the Office of Finance. Emergency

operating records are the type of vital records essential to the continued functioning or reconstitution of a regulated entity or the Office of Finance during and after an emergency. A vital record may be both an emergency operating record and a legal and financial rights record. **In all cases, a vital record shall have a clearly defined retention period consistent with the organization's record retention schedule.**

5. *Retention period* would be defined as the length of time that records must be kept before they are destroyed, **as determined by the organization's record retention schedule.** Records not authorized for destruction have a retention period of "permanent."

ARMA recommends the following modifications relative to the establishment and evaluation of record retention program –

§ 1235.3 Establishment and evaluation of record retention program.

(a) *Establishment.* Each regulated entity and the Office of Finance shall establish and maintain a written record retention program **that addresses the accountability, transparency, and compliance of any recordkeeping program, and the integrity, protection, availability, retention, and disposition of those records in possession, and which shall be audited at least annually,** and provide a copy of such program to the Deputy Director of the Division of Enterprise Regulation, or his or her designee, or the Deputy Director of the Division of Federal Home Loan Bank Regulation, or his or her designee (Deputy Director), as appropriate, within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made.

(b) *Evaluation.* Management of each regulated entity and the Office of Finance shall evaluate in writing the adequacy and effectiveness of the record retention program at least every three years and provide a copy of the evaluation to the board of directors and the appropriate Deputy Director. **Such evaluation shall include the results of annual audits of the program.**

ARMA recommends the following modifications relative to the minimum requirements of record retention program –

§ 1235.4 Minimum requirements of record retention program.

(a) Requirements. The record retention program established and maintained by each regulated entity and the Office of Finance under § 1235.3 shall be based on the following principles:

(1) The organization shall assign a senior executive who will oversee a recordkeeping program and delegate program responsibility to appropriate individuals, adopt policies and procedures to guide personnel, and ensure program auditability.

(2) The program shall be constructed so the records and information generated or managed by or for the organization have a reasonable and suitable guarantee of authenticity and reliability.

(3) The program shall be constructed to ensure a reasonable level of protection to records and information that are private, confidential, privileged, secret, or essential to business continuity.

(4) The program shall be constructed to comply with applicable laws and other binding authorities, as well as the organization's policies.

(5) The organization shall maintain records in a manner that ensures timely, efficient, and accurate retrieval of needed information.

(6) The organization shall maintain its records and information for an appropriate time, taking into account legal, regulatory, fiscal, operational, and historical requirements.

(7) The organization shall provide secure and appropriate disposition for records that are no longer required to be maintained by applicable laws and the organization's policies.

(8) The processes and activities of the program shall be documented in an understandable manner and be available to the examination and other staff of FHFA.

(b) Program Elements. The record retention program established and maintained by each regulated entity and the Office of Finance under § 1235.3 shall:

(1) Be reasonably designed to assure that retained records are complete and accurate;

(2) Be reasonably designed to assure that the format of retained records and the retention period—

(i) Are adequate to support litigation and the administrative, business, external and internal audit functions of the regulated entity or the Office of Finance;

(ii) Comply with requirements of applicable laws and regulations; and

(iii) Permit ready access by the regulated entity or the Office of Finance and, upon request, by the examination and other staff of FHFA by reasonable means, consistent with the nature and availability of the records and existing information technology.

(3) Assign in writing the authorities and responsibilities for record retention activities;

(4) Include policies and procedures concerning record holds, consistent with § 1235.5;

(5) Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, and operational and business requirements;

(6) Include adequate security and internal controls to protect records from unauthorized access and data alteration; and

- (7) Provide for adequate back-up and recovery of electronic records.
- (b) *Training.* The record retention program shall provide for training of and notice to all employees on a periodic basis on their record retention responsibilities, including instruction regarding penalties provided by law for the unlawful removal or destruction of records. The record retention program also shall provide for training for the agents or independent contractors of a regulated entity or the Office of Finance, as appropriate, consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance.
- (c) *Auditing.* The recordkeeping program shall be audited at least annually, and include a means of detecting any internal or external risks to the integrity of any retention schedules, disposition schedules, means safeguarding and disposal of records.**

RESPECTFULLY SUBMITTED,

ARMA INTERNATIONAL

By its President,

A handwritten signature in black ink, appearing to read "Douglas P. Allen", is written over a light blue horizontal line. The signature is fluid and cursive.

DOUGLAS P. ALLEN, CRM, CDIA+