

# Rules and Regulations

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 110

[Notice 2003-7]

#### Administrative Fines: Correction

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final rules governing the Administrative Fines program that were published in the **Federal Register** on March 17, 2003. The correction relates to a technical amendment updating a citation to the Federal Claims Collection Standards.

**DATES:** The correction is effective March 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel or Dawn M. Odrowski, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** On March 17, 2003, the Federal Election Commission published in the **Federal Register** final rules governing the Administrative Fines program. See Administrative Fines; final rules, 68 FR 12572 (March 17, 2003). These final rules included a technical amendment to 11 CFR 111.45 to correct a citation to the Federal Claims Collection Standards ("the Standards") in response to the revision and recodification of the Standards after the original Administrative Fines regulations were published in May 2000. In the March 17, 2003, **Federal Register** publication, instruction number 4 incorrectly identified "General Accounting Office" rather than "Government Accounting Office" as the language that is removed from 11 CFR 111.45.

## Correction of Publication

■ Accordingly, the publication of final regulations that were the subject of FR Doc. 2003-6, published on March 17, 2003 (68 FR 12572), is corrected as follows:

### PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

■ On page 12580, column 1, correct instruction number 4 to read as follows:

#### § 111.45 [Corrected]

"4. Section 111.45 is amended by removing in the second sentence the phrase, '4 CFR parts 101 through 105' and by adding in its place, '31 CFR parts 900 through 904,' and by removing in the second sentence the phrase, 'Government Accounting Office' and adding in its place, 'U.S. Department of the Treasury.'"

Dated: April 1, 2003.

**Ellen L. Weintraub,**

*Chair, Federal Election Commission.*

[FR Doc. 03-8307 Filed 4-4-03; 8:45 am]

**BILLING CODE 6715-01-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1730

RIN 2550-AA25

#### Public Disclosure of Financial and Other Information

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight is issuing a final regulation that sets forth public disclosure requirements with respect to financial and other information by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

**EFFECTIVE DATE:** April 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** David W. Roderer, Deputy General Counsel, or Christine C. Dion, Associate General Counsel, telephone (202) 414-6924 (not a toll-free number); Office of Federal Housing Enterprise Oversight,

Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Introduction

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102-550, entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992" (Act) (12 U.S.C. 4501 *et seq.*), established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are capitalized adequately and operate safely and in compliance with applicable laws, rules, and regulations.

The relationship of the government-sponsored enterprises to financial markets is critical to their viability. To accomplish their missions, the Enterprises must have access to capital markets. In supporting the primary mortgage markets, secondary market players, including the Enterprises, access domestic and global financing sources and offer a variety of issuances demanded by these markets. The Enterprises are significant as participants in mortgage-backed securities and agency debt markets, and in related hedging activities, and as issuers and guarantors of securities.

As users of and participants in the financial markets, the success of the Enterprises in meeting their public policy missions and in maintaining their safe and sound operations is inextricably tied to full and robust disclosure.<sup>1</sup> Disclosure may provide information about the corporate operations of a firm, the intricacies of a given securities offering, or specialized information concerning particular events or business practices. In addition, Enterprise securities have become increasingly significant to

<sup>1</sup> See, *Freddie Mac and Fannie Mae Enhancements to Capital Strength, Disclosure and Market Discipline*, 3-4 News, Archives (October 19, 2000), available at <http://www.freddiemac.com/>; and *Franklin Raines, FDIC Panel: "The Rise of Risk Management: Challenges for Policy Makers,"* 1, 6 Media, Speeches (July 31, 2002), available at <http://www.fanniemae.com/>.

domestic and foreign market participants. The business practices of the Enterprises affect large and small investors, debt markets and international debt holders alike. Access to the markets and the price of that access are directly affected by investor perceptions of the transparency of the Enterprises and the safety and soundness of their operations. In such an environment, as the Enterprises themselves acknowledge, they have an interest in providing "best in class" disclosures.<sup>2</sup>

### *B. Disclosure and Safe and Sound Operations*

Full and adequate disclosure of information by the Enterprises regarding their financial conditions and risks is an important part of OFHEO's supervisory program. Full disclosure enhances market discipline.<sup>3</sup> OFHEO possesses both explicit and implied authorities to address the Enterprises' disclosure practices.<sup>4</sup> The office has at its disposal a range of supervisory tools to require full and meaningful disclosures.<sup>5</sup>

While the offer and sale of their securities are exempt from the registration requirements of the Securities Act of 1933<sup>6</sup> and their securities are exempted securities under the Securities Exchange Act of 1934 (Exchange Act),<sup>7</sup> the Enterprises last July indicated that they would voluntarily register their common stock with the Securities and Exchange Commission (SEC) under the provisions of Section 12(g) of the Exchange Act, 15 U.S.C. 78l(g). That section permits companies not covered by the Exchange Act and its requirements for periodic disclosures to submit voluntarily to SEC rules. Voluntary registration triggers the attendant rules and regulations of the SEC, including SEC enforcement authorities. Once a company volunteers, it must remain under the strictures of the law, unless permitted to remove itself by the SEC. OFHEO is proposing this regulation, in part, to facilitate the

process of voluntary registration by the Enterprises under the Exchange Act.

OFHEO has a broad statutory mandate to adopt regulations, rules, and guidances deemed to be appropriate to assuring the safety and soundness of the Enterprises including appropriate disclosures that aid in promoting market discipline. OFHEO is empowered fully to mandate financial and securities disclosure and to take related actions to implement such regulatory requirements through filings and submissions, examination and oversight of disclosures. OFHEO anticipates no duplication of regulation as it administers its broad safety and soundness obligations.

### *Public Disclosure of Financial and Other Information Regulation*

OFHEO issued a proposed Public Disclosure of Financial and Other Information regulation, which was published in the **Federal Register** on January 23, 2003.<sup>8</sup> The proposed regulation complements the examination and supervisory programs of OFHEO and ensures that the disclosure policies and practices of the Enterprises comport with safety and soundness standards.

## **II. Response to Comments**

OFHEO received six comment letters on the proposed regulation. Comment letters were received from Fannie Mae; Freddie Mac; America's Community Bankers, a national trade association for community banks of all charter types; FM Watch, a coalition of financial services and housing-related trade associations; Mr. James G. McDonald, a self-described civil rights attorney from Virginia, and Ms. Yvonne M. Wohlers from Williamsburg, Virginia.

### *Comments*

The comments addressed both general and specific elements of the proposed rule. All comments endorsed increased public disclosure of information by the Enterprises.

The comment letters of Mr. McDonald and Ms. Wohlers, while supporting broad disclosure of Enterprise information, raised issues relating to immigration matters that are not germane to the purpose or scope of the proposed regulation that focuses on securities and other financial disclosures.

FM Watch characterized the proposed regulation as an interim measure stating its position that parity of securities regulation can result only through enactment of legislation that would

repeal the exempt status of Enterprise securities under the Federal securities laws. FM Watch suggested revising the proposed regulation in several areas. FM Watch recommended that the regulation specify the procedures to be used by, and the sanctions available to, OFHEO to enforce compliance with disclosure requirements.

As noted in the preamble to the proposed regulation, OFHEO possesses a broad range of explicit and implied authorities to address the Enterprises' disclosure practices. The Office has at its disposal a variety of supervisory tools to require full and meaningful disclosure. As stated in section 1730.1(b) of the proposed and final rule, the regulation in no way limits or restricts the authority of OFHEO to act under its safety and soundness mandate to regulate the Enterprises, including, but not limited to, "enforcing compliance with applicable laws, rules and regulations." For these reasons, OFHEO has determined that it is not necessary to include a separate enforcement or compliance provision in this regulation.

FM Watch also suggested that the proposed regulation be supplemented with additional sections that would delineate the respective responsibilities and remedies of OFHEO and the SEC with respect to Enterprise disclosures. In addition, FM Watch recommended that OFHEO enter into a Memorandum of Understanding with the SEC regarding compliance issues and establish a procedure for the receipt and processing of investor grievances.

As noted in the preamble to the proposed regulation, voluntary registration triggers the attendant rules and regulations of the SEC, including SEC enforcement authorities. OFHEO proposed this regulation, in large part, to facilitate the process of voluntary registration by the Enterprises under the Exchange Act. Moreover, OFHEO has a broad statutory mandate to adopt regulations, rules, and guidances to assure safe and sound operations of the Enterprises including appropriate disclosures. OFHEO regularly communicates with the SEC. Further, OFHEO regularly receives comments from private persons and groups on a range of topics and a regulation need not establish a specialized procedure for receipt of comments. In sum, the enforcement policies and practices of OFHEO with respect to Enterprise disclosures do not require additional elaboration in this rulemaking.

FM Watch also recommended that the proposed regulation be revised by adding a section detailing various disclosure commitments made by the

<sup>2</sup> *Id.* See, for example, Fannie Mae, *Franklin Raines, FDIC Panel*.

<sup>3</sup> See Basel Committee on Banking Supervision's consultative paper entitled, "A New Capital Adequacy Framework." (Basel Committee Publications No. 50 (June 1999)).

<sup>4</sup> In general, see 12 U.S.C. 4513, 12 U.S.C. 4631, 4632, and 4636; 12 U.S.C. 4514; 12 U.S.C. 4501(6) as well as the chartering acts for the Enterprises at 12 U.S.C. 1723a(k)(2) and 12 U.S.C. 1456(c)(2) and (3).

<sup>5</sup> An unsafe or unsound practice may serve as a basis for enforcement action by OFHEO pursuant to 12 CFR parts 1777 and 1780.

<sup>6</sup> 15 U.S.C. 77a through 77aa.

<sup>7</sup> 15 U.S.C. 78a through 78jj.

<sup>8</sup> 68 FR 3194 (January 23, 2003).

Enterprises since October 2000 in order to ensure that such commitments are strictly adhered to by the Enterprises. OFHEO has determined that such a recitation of Enterprise disclosure commitments is unnecessary in this regulation. OFHEO has indicated previously that it monitors these disclosure commitments.

FM Watch also recommended that the regulation require the Enterprises to adopt internal rules with respect to insider transactions. OFHEO's existing regulations and guidances address the maintenance of appropriate internal guidelines and procedures by the Enterprises.<sup>9</sup>

Both Freddie Mac and Fannie Mae commented on proposed paragraph (a) of section 1730.3 that would require the preparation of disclosures relating to an Enterprise's financial condition, results of operation, business developments, and management expectations that include supporting financial information and certifications. The requirements in paragraph (a) will be satisfied through compliance by an Enterprise with SEC disclosure requirements specified in paragraph (b)(1)–(3) of the section.

Freddie Mac characterized paragraph (a) as being “an open-ended” disclosure requirement. Freddie Mac also asserted that it is unclear whether OFHEO is imposing a disclosure obligation in paragraph (a) that is different from the legal standards governing other Exchange Act registrants. Freddie Mac commented that, in order to eliminate any ambiguity with respect to Enterprise disclosure obligations, proposed section 1730.3 be revised by deleting paragraph (a) to merely require the Enterprises to comply with SEC regulations specified in paragraph (b) with respect to the submission of proxy statements and insider trading reports by officers and directors. Similarly, Fannie Mae commented that section 1730.3 of the proposed regulation goes beyond filling in the regulatory “gaps” that the SEC would be unable to reach notwithstanding its voluntary registration. Fannie Mae characterized the proposed section as an assertion of parallel authority for OFHEO to act as a “back-up” regulator regarding regulations applicable to Fannie Mae by virtue of its registration with the SEC. Fannie Mae expressed its view that Congress has not charged OFHEO with the responsibility of investor protection. It further opined that there is no basis in statute or public policy for OFHEO to raise through its proposal the possibility

that the agency might at some point seek to substitute its judgment for that of the SEC with respect to disclosure regulation and enforcement. Fannie Mae stated that section 1730.3 (b)(1) would make failure to meet SEC requirements a violation of OFHEO's rules as well. For those reasons, Fannie Mae urged that paragraph (b)(1), which addresses periodic disclosures required by registrants under section 12 of the Exchange Act, be deleted from the final regulation.

OFHEO notes that section 1730.3(a) simply reiterates the overall authority of OFHEO to regulate financial and other disclosures of the Enterprises as part of its statutory safety and soundness responsibilities. In supporting voluntary registration by the Enterprises under the Exchange Act, the regulation in no way impinges upon or contracts OFHEO's safety and soundness authorities. The comments of Freddie Mac and Fannie Mae go to the possible scope and exercise of those authorities that are not the focus of this section of the regulation. Further, as indicated in the preamble to the proposed rule, OFHEO's actions are guided by its statute that provides for oversight of Enterprise safety and soundness. As indicated as well in the preamble, OFHEO anticipates no duplication of regulation in meeting its obligations. Additionally, OFHEO has tools at its disposal to clarify and make certain any issue relating to the subsection's requirements should such a need arise.

In addition to its general comments, Fannie Mae requested a technical change to section 1730.3, paragraph (a) that requires each Enterprise to prepare disclosures relating to “its financial condition, results of operation, business developments, and management's expectations. \* \* \*” Fannie Mae requested that the text be changed to read “its financial condition, results of operation and business” as Fannie Mae stated that SEC rules regarding business development and management expectations are more limited and will be adequately addressed through the periodic reports it will be required to file upon registration under the Exchange Act.

As noted earlier, however, this section addresses OFHEO's safety and soundness authority and does not reference other statutes. OFHEO's descriptions of its authorities, indeed, may be expected to be different from language employed by another regulator acting under a different statutory regime.

Both Freddie Mac and Fannie Mae commented on section 1730.3(b)(1) of the proposed regulation, that requires an

Enterprise satisfying its disclosure obligations through compliance with various SEC regulations to prepare and make public reports and other materials “that may be required under the rules and regulations of the [SEC], including interpretations of the Commission and its staff. \* \* \*” Both Enterprises asserted that this would be a new requirement, not imposed on other SEC registrants. Also, they noted that SEC staff interpretations do not establish legally binding and enforceable disclosure requirements for SEC registrants. For these reasons, they requested that reference to staff interpretations be deleted from paragraph (b)(1) in the final regulation.

The provision is retained as proposed. SEC registrants are expected to comply with staff interpretations that are applicable to those registrants. The Enterprises can, of course, discuss with the SEC staff the appropriate method for complying with interpretations.

Freddie Mac also commented on section 1730.4 of the proposed regulation, which requires the Enterprises to provide to OFHEO copies of all disclosures filed with the SEC. Freddie Mac requested that OFHEO modify the section to indicate that OFHEO would provide confidential treatment for such submissions similar to that provided by the SEC under Rule 24b–2. OFHEO has existing procedures that address the treatment of confidential Enterprise submissions. The procedures provide case-by-case determinations and ensure that nonpublic, confidential information is safeguarded whenever appropriate. Accordingly, OFHEO has determined that it is not necessary to modify section 1730.4 in the final regulation.

OFHEO is adopting the regulation as proposed.

### Regulatory Impact

#### *Executive Order 12866, Regulatory Planning and Review*

This regulation would not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. This regulation, however, has been submitted to the Office of Management and Budget

<sup>9</sup>For example, among others, 12 CFR 1710 and 1720 (Appendix A).

(OMB) for review under other provisions of Executive Order 12866 as a significant regulatory action.

#### *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). OFHEO has considered the impact of this final regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the regulation, as herein adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

#### *Executive Order 13132, Federalism*

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. The Enterprises are federally chartered corporations supervised by OFHEO. This regulation sets forth minimum disclosure standards with which the Enterprises must comply for Federal supervisory purposes and address the safety and soundness authorities of the agency. This regulation does not affect in any manner the powers and authorities of any State with respect to the Enterprises or alter the distribution of power and responsibilities between State and Federal levels of government. Therefore, OFHEO has determined that this final regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

#### **List of Subjects in 12 CFR Part 1730**

Government-sponsored enterprises, Financial disclosure, Reporting and recordkeeping requirements, Records.

■ Accordingly, for the reasons stated in the preamble, OFHEO adds part 1730 to subchapter C of 12 CFR Chapter XVII to read as follows:

#### **Subchapter C—Safety and Soundness**

#### **PART 1730—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION**

Sec.

- 1730.1 Purpose.
- 1730.2 Definitions.
- 1730.3 Periodic disclosures.
- 1730.4 Submission of disclosures.

**Authority:** 12 U.S.C. 4513; 12 U.S.C. 4514; 12 U.S.C. 4631; and, 12 U.S.C. 4632.

##### **§ 1730.1 Purpose.**

(a) The purpose of this part is to require the Enterprises to prepare and submit financial and other disclosures as specified by OFHEO.

(b) This part does not limit or restrict the authority of OFHEO to act under its safety and soundness mandate to regulate the Enterprises, including conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations.

##### **§ 1730.2 Definitions.**

For purposes of this part, the term:

(a) *Commission* means the Securities and Exchange Commission (or SEC).

(b) *Disclosure or disclosures* means any report[s], form[s], or other information submitted by the Enterprises pursuant to this part and may be used interchangeably with the terms “report[s]” or “form[s].”

(c) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term “Enterprises” means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(d) *Exchange Act* means the Securities Exchange Act of 1934.

(e) *OFHEO* means the Office of Federal Housing Enterprise Oversight (or the office).

##### **§ 1730.3 Periodic disclosures.**

(a) Each Enterprise shall prepare disclosures relating to its financial condition, results of operation, business developments, and management's expectations that include supporting financial information and certifications.

(b) The requirement of paragraph (a) of this section for disclosures will be satisfied if:

(1) In the case of an Enterprise having a class of securities registered pursuant to Section 12 of the Exchange Act, the Enterprise prepares and makes public

an annual report, quarterly report and current reports and such other materials that may be required under the rules and regulations of the Commission, including interpretations of the Commission and its staff and rules governing audited financial statements;

(2) The Enterprise files with the Commission all reports, statements, and forms required pursuant to Sections 14(a) and (c) of the Exchange Act and by rules and regulations adopted by the Commission under those sections that would be required to be filed by the Enterprises if the Enterprises has a class of equity securities registered under Section 12(g) of the Exchange Act that were not exempted securities under the Exchange Act; and,

(3) The officers and directors of the Enterprise file with the Commission all reports and forms relating to the common stock of the Enterprise that would be required to be filed by the officers and directors pursuant to Section 16 of the Exchange Act and by rules and regulations adopted by the Commission under that section if the Enterprises had a class of equity securities registered under Section 12(g) of the Exchange Act that were not exempted securities under the Exchange Act.

##### **§ 1730.4 Submission of disclosures.**

Unless otherwise required by OFHEO, the Enterprises shall provide to OFHEO on a concurrent basis copies of all disclosures filed with the SEC pursuant to § 1730.3.

Dated: April 1, 2003.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 03–8379 Filed 4–4–03; 8:45 am]

**BILLING CODE 4220–01–P**

## **DEPARTMENT OF JUSTICE**

### **Parole Commission**

#### **28 CFR Part 2**

#### **Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes**

**AGENCY:** Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Parole Commission is amending its procedures governing the mandatory release of military prisoners confined in Federal civilian prisons. Such mandatory release is earned through good time credits. The