



OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

# NEWS RELEASE

**For Immediate Release**

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**www.ofheo.gov**

## **OFHEO RELEASES ADDITIONAL REGULATORY PROPOSALS UNDER INFRASTRUCTURE PROJECT**

**Attached: Language that appeared in the *Federal Register***

**WASHINGTON, D.C.** – **Armando Falcon, Jr.**, Director of the Office of Federal Housing Enterprise Oversight (OFHEO), financial safety and soundness regulator of Fannie Mae and Freddie Mac (the Enterprises), has released the first of a set of regulations under an infrastructure project announced in July.

OFHEO's regulatory initiatives address four components: OFHEO organization, enterprise corporate governance, safety and soundness issues and compliance matters.

OFHEO has sent the following **proposed** rules to the *Federal Register* for publication:

- 1. Enforcement.** A **proposed rule** with a 60-day comment period on revisions to its rules governing administrative enforcement proceedings intended to clarify the scope of its authority to issue cease and desist orders and to impose various corrective and remedial sanctions, including civil money penalties, on Fannie Mae and Freddie Mac.
- 2. Executive compensation.** A **proposed rule** with a 90-day comment period that codifies much of current practice related to the procedures of transmitting information about covered officers subject to review for executive compensation provided in the OFHEO enabling statute.
- 3. Assessment.** A **proposed rule** with a 30-day comment period codifying its existing practices regarding the calculation and payment of its assessments of the Enterprises.

*(more)*

OFHEO issued **policy guidances** on the following :

4. **Safety and Soundness.** OFHEO issued a **policy guidance** on safety and soundness policies required to be maintained by the government sponsored enterprises. The guidance provides illumination of the broad areas and types of practices that have been and continue to be expected to be addressed by the Enterprises to meet safety and soundness concerns.

5. **Non-mortgage investments.** OFHEO issued a **policy guidance** on information regarding non-mortgage, liquidity investments of the government sponsored enterprises. The supervisory guidance details initiatives with the enterprises regarding OFHEO's safety and soundness expectations for their non-mortgage investment activities.

OFHEO will publish a **final rule** on the following:

6. **Reorganization of rule numbers.** OFHEO published as a **final rule** a reorganization of its rules to accommodate changes being undertaken as part of the regulatory infrastructure project.

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(7) Proxy statements when issued;  
 (8) Information regarding the hiring of and payment of compensation to an executive officer for whom a contract remains under negotiation; and

(9) Such other information as deemed appropriate by the Director.

(c) *Timing of submissions related to prior approval requests of termination benefits.* All relevant information should be provided to OFHEO when an Enterprise:

(1) Enters into any agreement or contract with a new or existing executive officer that includes termination benefits;

(2) Makes any extension or other amendment to such an agreement or contract;

(3) Takes any other action to provide termination benefits to a specific executive officer, regardless of how it is effected;

(4) Makes any changes in post-employment benefit programs affecting multiple executive officers; or

(5) Changes the termination provisions of other compensation programs affecting multiple executive officers.

(d) *Specific information required for calculation of termination benefits.*

Before entering into an agreement or contract to provide termination benefits to an executive officer, and before any renegotiation, amendment or change to such an agreement or contract, an Enterprise shall submit to OFHEO the following materials:

(1) The details of the agreement or program change, *e.g.*, employment agreements, termination agreements, severance agreements, and portions of Board minutes relating to executive compensation and minutes and supporting materials of the compensation committee of the Board;

(2) All information, data, assumptions and calculations for the potential total dollar value or range of values of the benefits provided, such as but not limited to salary, bonus opportunity, short-term incentives, long-term incentives, special incentives and pension provisions or related contract or benefit terms; and

(3) Such other information deemed appropriate by the Director.

#### § 1770.5 Compliance

(a) An employment agreement or contract subject to the Director's prior approval, as set forth in § 1770.1(b)(2), may be entered into prior to that approval, *provided that* such agreement or contract specifically provides that termination benefits under the agreement or contract shall not be effective and no payments shall be made

thereunder unless and until approved by OFHEO. Such notice should make clear that alteration of benefit plans subsequent to OFHEO approval under this section, that affect final termination benefits of an executive officer, requires review at the time of the individual's termination from the Enterprise and prior to the payment of any benefits.

(b) The Enterprises shall establish and follow written procedures implementing the submission requirements contained in § 1770.4 within 60 days of the effective date of this regulation.

(c) Failure by an Enterprise to comply with the requirements of paragraph (a) or (b) of this section or the submission requirements of § 1770.4 may be deemed to constitute an unsafe or unsound practice warranting corrective or remedial action by OFHEO.

(d) Action by OFHEO under this regulation may be taken separately from, in conjunction with, or in addition to any other corrective or remedial action, including an enforcement action to require an individual to make restitution to or reimbursement to the Enterprise of improperly paid compensation or termination benefits.

Dated: December 19, 2000.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1780

**RIN 2550-AA16**

#### Rules of Practice and Procedure

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) solicits comment on proposed amendments to OFHEO's rules governing administrative enforcement proceedings. The amendments summarize OFHEO's statutory authority to issue cease and desist orders and to impose various corrective and remedial sanctions, including, among other things, civil money penalties, against the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), as well as their executive officers and directors. By describing the grounds on

which such actions might be instituted, and providing examples of the terms and conditions the agency might impose, OFHEO seeks to ensure greater transparency to the agency's supervisory regime and the safeguards affecting Freddie Mac and Fannie Mae.

**DATES:** Written comments on the proposed rule must be received by February 26, 2001.

**ADDRESSES:** All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at <http://www.ofheo.gov>. OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5" disk. Alternatively, comments may be submitted via electronic mail to: [RegComments@ofheo.gov](mailto:RegComments@ofheo.gov).

#### FOR FURTHER INFORMATION CONTACT:

David W. Roderer, Deputy General Counsel, (202) 414-6924, Jamey Basham, Counsel (202) 414-8906 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877-8339 (TDD *only*).

#### SUPPLEMENTARY INFORMATION:

##### Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development (HUD) with responsibility for ensuring that Fannie Mae and Freddie Mac (collectively, the Enterprises) are adequately capitalized and operate safely and in conformity to the requirements of applicable laws, rules and regulations, including their respective charter acts. The Enterprises are Government-sponsored corporations established under Federal law to effect specific public purposes.<sup>1</sup> These include providing liquidity to the residential mortgage market and promoting the availability of mortgage

<sup>1</sup> See Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; Act at 12 U.S.C. 4561-67, 4562 note.

credit benefiting low-and moderate-income families and areas that are underserved by lending institutions.

The express statutory authorities of the Director of OFHEO (Director) under the Act include the primary responsibility of ensuring that the Enterprises operate in a safe and sound manner.<sup>2</sup> OFHEO's principal responsibility is to ensure the Enterprises are operating in a safe and sound manner, and in compliance with applicable laws and regulations. To this end, the Act grants OFHEO broad statutory powers similar to those of the Federal bank regulatory agencies, including the authority to issue regulations to carry out the Act;<sup>3</sup> to conduct examinations of the Enterprises and require the Enterprises to provide financial reports;<sup>4</sup> to establish capital requirements for the Enterprises;<sup>5</sup> and, in appropriate circumstances, to take prompt corrective action against any Enterprise that fails to remain adequately capitalized, including possible imposition of a conservatorship.<sup>6</sup>

In addition, the Act grants OFHEO essentially the same administrative enforcement authority as Congress has granted the Federal bank regulatory agencies, including the power to issue temporary and permanent cease and desist orders to an Enterprise or its executive officers or directors, and to impose civil money penalties when appropriate.<sup>7</sup> Prior to issuing a cease and desist order, OFHEO must conduct a hearing on the record and provide the subject of an order with notice and the opportunity to participate in such hearings. Prior to imposing civil money penalties, OFHEO must provide notice and the opportunity for a hearing to the persons subject to the penalties. Part 1780 of OFHEO's rules and regulations currently sets out the procedural rules under which such notices are provided and hearings conducted.

In this Notice of Proposed Rulemaking (NPR), OFHEO proposes to clarify the agency's enforcement rules at part 1780, which are largely procedural in nature, by describing briefly the categories of circumstances in which OFHEO may initiate enforcement actions, as well as the types of remedies and sanctions OFHEO may impose through a cease and desist order or civil money penalty. By providing the public

with general information about the scope of OFHEO's administrative enforcement authority, OFHEO seeks to effect greater transparency for the OFHEO's supervisory regime and increased public awareness of the supervisory standards and safeguards affecting the Enterprises.

#### Statutory Enforcement Powers

OFHEO's general enforcement powers are codified in Subtitle C of the Act. Subtitle B of the Act specifies certain enforcement steps required to be taken by OFHEO when an Enterprise is not adequately capitalized, as well as certain discretionary enforcement actions available to OFHEO in such circumstances. Whenever the discretionary provisions of Subtitle B apply, the Director has discretion to take action under Subtitle B alone or to take alternative or simultaneous actions under the provisions of Subtitle C.<sup>8</sup>

OFHEO's enforcement powers extend to affiliates of the Enterprises<sup>9</sup> and executive officers and directors thereof. The Act defines an affiliate to be any entity that controls, is controlled by, or is under common control with an Enterprise. 12 U.S.C. 4502(1). Congress did not define control, leaving the term instead to be interpreted by OFHEO in its administrative expertise. For these purposes, OFHEO will look to see whether an entity exercises a controlling influence over the management and policies of the particular entity, whether it be by ownership of or the power to vote a concentration of any class of voting securities, the ability to elect or appoint members of the board of directors or officers of the entity, or otherwise. This standard is appropriate, in order to ensure that an Enterprise or an entity controlling it does not manipulate its organizational structure in order to evade OFHEO's enforcement jurisdiction.

The Act, at 12 U.S.C. 4631, authorizes the Director to issue a cease and desist order or orders to an Enterprise or its executive officers or directors. The Director may issue a notice of charges if the Director determines that certain conduct has occurred, or reasonably believes such conduct is about to occur:

- For an adequately capitalized Enterprise any conduct that threatens to cause a significant depletion of core capital, or for an Enterprise that is not adequately capitalized any conduct that is likely to result in a material depletion of core capital;

- Any conduct that could result in the issuance of an order to require an executive officer or director of an Enterprise to reimburse or indemnify the Enterprise, where such person is either unjustly enriched or engaged in knowing misconduct likely to cause substantial loss, as provided under the Act at 12 U.S.C. 4636(b)(3);

- Any conduct that violates a written agreement entered into by the Enterprise with the Director; or

- Any conduct that violates the Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act (collectively, the Charter Acts), or any regulation, rule, or order under such Acts. However, the Director may not enforce compliance with housing goals established pursuant to 12 U.S.C. 4561–4567 under the Act,<sup>10</sup> with 12 U.S.C. 4566 and 4567 under the Act,<sup>11</sup> or with 12 U.S.C. 1723a(m)–(n) under the Federal National Mortgage Association Charter Act or 12 U.S.C. 1456(e)–(f) under the Federal Home Loan Mortgage Corporation Act.<sup>12</sup>

Section 4631 authorizes the Director to issue a notice of charges to initiate cease and desist proceedings if an Enterprise, an executive officer, or a director thereof engages in an unsafe or unsound practice or if the Enterprise is in an unsafe or unsound condition. As indicated by the language of the statute and its legislative history,<sup>13</sup> the unsafe and unsound conduct or condition in question need not be specifically defined as such by a particular statutory or regulatory provision. The Act subjects the Enterprises to an overarching obligation to conduct their operations in a manner that maintains the safe and sound condition of the Enterprise, the boundaries of which are set by OFHEO in its supervisory discretion.<sup>14</sup> Unsafe or unsound practices or conditions are deemed to be violations of the Act for purposes of section 4631(a)(3)(A), justifying the Director's initiation of cease and desist proceedings based on such a violation.

<sup>10</sup> Provisions addressing housing goals under the authority of the Secretary of HUD.

<sup>11</sup> Provisions addressing reporting, monitoring and enforcement of housing goal compliance.

<sup>12</sup> Provisions addressing Enterprise data and reports relating to housing goals.

<sup>13</sup> See, e.g., 68–69 H.R. Rep. 102–206, 102nd Cong., 1st Sess. (1991) (to prohibit outright any new undertaking which presents excessive management or operations risk, Director can obtain judicial enforcement of temporary cease and desist order).

<sup>14</sup> As is discussed in the "Background" material above, OFHEO exercises exclusive authority for matters relating to the Enterprises' safety and soundness, and vested with broad powers to that end. See, e.g., 12 U.S.C. 4513(a), 4513(b)(5), 4517(a), and 4521(a)(2)–(3).

<sup>2</sup> 12 U.S.C. 4513(a), 4513(b)(1), 4517(a), 4521(a)(2)–(3).

<sup>3</sup> 12 U.S.C. 4513(b)(1).

<sup>4</sup> 12 U.S.C. 4514, 4517.

<sup>5</sup> 12 U.S.C. 4611–4614.

<sup>6</sup> 12 U.S.C. 4615–4623.

<sup>7</sup> 12 U.S.C. 4631–4641.

<sup>8</sup> See 12 U.S.C. 4631(b).

<sup>9</sup> The Act defines the term "enterprise" to include any affiliates thereof. 12 U.S.C. 4502(6).

In directing OFHEO to ensure the safety and soundness of the Enterprises, the Act does not define or elaborate upon what constitutes an unsafe and unsound practice or condition. As similarly used in connection with the federal bank regulatory agencies after which Congress in large part patterned OFHEO's supervisory regime, the concept of safety and soundness is widely acknowledged to be a broad prudential standard left to the expert agency to define and refine over time in light of changes in the environment and marketplace affecting the Enterprises. The concept encompasses any action or inaction that contravenes prudent standards of operation that might result in loss or damage to the Enterprise, including failure to respond appropriately to changes in circumstances or to unforeseen events. The risk of loss or damage need not be immediate, so long as the loss or damage is likely if the conduct continued unabated or action is not taken to address the condition. Nor is it necessary that the loss or damage be of such magnitude to threaten the capital or financial integrity of the Enterprise. Prompt corrective action procedures under subtitle B of the Act separately address such thresholds.

If the Director finds that the record establishes the infraction forming the basis of the cease and desist the Director has wide latitude in structuring the remedial provisions of a cease and desist order. In addition to ordering the Enterprise, its executive officers, or its directors to cease and desist the infraction, section 4631 authorizes the Director to include provisions limiting the activities or functions of the Enterprise or its executive officers or directors, as well as provisions requiring affirmative action to correct or remedy any condition resulting from the infraction, as the Director determines appropriate. This includes, but is not limited to, provisions to:

- Require the Enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;
- Restrict growth of the Enterprise;
- Require the Enterprise to dispose of any particular asset or assets; and
- Require the Enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director).

The Director may include other corrective or remedial provisions as deemed appropriate, such as requirements to obtain new capital; or directives to improve design or implementation of internal controls,

management reporting systems, risk measurement and limits, compliance efforts, or policies and procedures. Section 4631 also provides that the Director may order an executive officer or director of an Enterprise to make restitution or reimbursement to the Enterprise, or to provide indemnification or guarantee against loss, to the extent such person was unjustly enriched in connection with the particular conduct or violation in question, or was engaged in knowing conduct that caused or would be likely to cause a substantial loss to the Enterprise.

Under the Act at 12 U.S.C. 4632, the Director may issue a temporary cease and desist order. A temporary cease and desist order may be issued if any conduct or threatened conduct specified in a notice of charges served on the Enterprise, executive officer, or director is likely to cause any of the following conditions or circumstances prior to proceedings for a permanent cease and desist order being completed:

- Insolvency;
- Significant depletion of the core capital of the Enterprise; or
- Other irreparable harm to the Enterprise.

The temporary order may direct the Enterprise, executive officer, or director to cease the conduct and take affirmative action to prevent the insolvency, depletion of capital, or harm for the duration of the cease and desist proceedings. Also, if a notice of charges specifies that the books and records of the Enterprise are so incomplete or inaccurate that the Director is unable through normal supervisory processes to determine either the financial condition of the Enterprise or the details or purpose of transactions that may have a material effect on the financial condition of the Enterprise, the Director may issue a temporary order concerning the records. The order may direct the Enterprise to cease the activity or practice that gave rise to the incomplete or inaccurate state of the records, and may direct the Enterprise to make the records complete and accurate.

The Act, at 12 U.S.C. 4636, also authorizes the Director to impose civil money penalties up to \$5,000<sup>15</sup> (a first-

<sup>15</sup> For violations or conduct occurring after October 23, 1996, the maximum amount of each tier of civil money penalties is ten percent higher than the amounts set out in section 1376 of the Act, in accordance with the Debt Collection Improvement Act of 1996 (28 U.S.C. 2461 note). A table of the increased maximum penalties is available at section 1780.80 of OFHEO's rules and regulations (12 CFR § 1780.80).

tier CMP) for each day that an Enterprise:

- Violates the Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act (collectively, the Charter Acts), or any regulation, rule, or order under such Acts. However, the Director may not enforce compliance with housing goals established pursuant to 12 U.S.C. 4561–4567 under the Act, with 12 U.S.C. 4566 and 4567 under the Act, or with 12 U.S.C. 1723a(m)–(n) under the Federal National Mortgage Association Charter Act or 12 U.S.C. 1456(e)–(f) under the Federal Home Loan Mortgage Corporation Act.

- Violates a written agreement entered into by the Enterprise with the Director; or

- Violates any permanent or temporary cease and desist order entered under sections 4631 or 4632, or orders entered pursuant to 12 U.S.C. 4615 or 4616 under the Act.<sup>16</sup>

First-tier CMPs are not appropriate if the violation or conduct at issue consists of an unsafe and unsound practice that is not prohibited by a particular statute, regulation, or order. Under the language of section 4636, such violations or conduct are susceptible to second- or third-tier CMPs, if the aggravating circumstances discussed below are also present.<sup>17</sup>

Section 4636 authorizes the Director to impose civil money penalties on an Enterprise up to \$25,000 for each day of violation or conduct, or on an executive officer or director of up to \$10,000 for each day of violation or conduct (a second-tier CMP). Second-tier CMPs are applicable to the same kinds of infractions covered by first-tier CMPs, as well as any violation or conduct that causes or is likely to cause a loss to the Enterprise, if the Director also find that the violation or conduct:

- Is part of a pattern of misconduct; or

<sup>16</sup> Provisions setting out supervisory actions applicable to undercapitalized Enterprises and significantly undercapitalized Enterprises, respectively.

<sup>17</sup> Although unsafe and unsound practices are conduct which violates the Safety and Soundness Act (see the discussion in connection with permanent cease and desist orders above) and first-tier CMPs are applicable to an Enterprise's violation of the Safety and Soundness Act (section 4636(a)(1)), section 4636(a)(4) separately mentions any conduct that causes or is likely to cause a loss to the Enterprise, and first-tier CMPs are only available for conduct violating sections 4636(a)(1)–(3) (section 4636(b)(1)). Nevertheless, first-tier CMPs are applicable to violations of any OFHEO order or regulation setting out safety and soundness standards (or any other applicable regulation or order), as such violations are covered by section 4636(a)(1) without reservation.

• Involved recklessness and caused or would be likely to cause a material loss to the Enterprise.

If the Director finds instead that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to the Enterprise, the Director may impose penalties on an Enterprise of up to \$1,000,000 per day of violation or conduct or on an executive officer or director of up to \$100,000 per day of violation or conduct (a third-tier CMP).

The Director may impose civil money penalties in addition to any other civil remedy or administrative sanctions available under the Act.<sup>18</sup> In determining the appropriateness and amount of a penalty (within the range established for each tier), the Director may give consideration to the following factors:

- The gravity of the violation or conduct;
- Any history of prior violations or conduct;
- The effect of the penalty on the safety and soundness of the Enterprise;
- Any injury to the public;
- Any benefits received; and
- Deterrence of future violations or conduct.

Under section 4636(c)(2), the Director may take into account any other factors that the Director has determined, by regulation, are appropriate. OFHEO proposes to add the following factors to those specified in the statute itself:

- Any related or unrelated previous supervisory actions;
- Any loss or risk of loss to the Enterprise;
- Any attempts at concealment;
- Any circumstances of hardship upon an executive officer or director;
- Promptness and effectiveness of any efforts to ameliorate the consequences of the violation or conduct; and
- Candor and cooperation after the fact.

OFHEO requests public comment specifically addressing these factors, as well as the question of whether OFHEO should adopt other factors as part of this rulemaking.

Under the Act at 12 U.S.C. 4639, hearings concerning cease and desist orders or civil money penalties are to be open to the public, unless the Director determines that an open hearing would be contrary to the public interest. Final orders in cease and desist proceedings or civil money penalty proceedings are also to be made available to the public, as well as any modifications thereto, unless the Director determines in

writing to delay public disclosure for a reasonable time if immediate disclosure would seriously threaten the financial health or safety of the Enterprise.

#### Proposed Rule Synopsis

The proposed rule amends the scope section of the rule, § 1780.1, to add a brief summary of the Director's legal authorities as discussed above. In addition to the specific question posed above requesting public comments whether OFHEO should expand the list of factors taken into account in setting the amount of a civil money penalty, OFHEO welcomes public comments on all aspects of the proposed rule.

#### Regulatory Impact

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

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it will 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 and this proposed regulation has not been submitted to the Office of Management and Budget for review.

##### *Unfunded Mandates Reform Act of 1995*

This proposed rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the proposed rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

##### *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 the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation only affects the Enterprises, their executive officers, and their directors.

##### *Paperwork Reduction Act of 1995*

This proposed rules contain no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

#### List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set out in the preamble, the Office of Federal Housing Enterprise Oversight proposes to amend 12 CFR part 1780 as follows:

#### PART 1780—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 1780 is revised to read as follows:

**Authority:** 12 U.S.C. 4501, 4513, 4517, 4521, 4631–4641.

##### Subpart A—General Rules

2. Revise § 1780.1 to read as follows:

##### § 1780.1 Scope.

(a) *Types of proceedings governed by these rules.* This part prescribes rules of practice and procedure applicable to the following adjudicatory proceedings:

(1) Cease-and-desist proceedings under sections 1371 and 1373, title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, entitled The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4631 and 4633);

(2) Civil money penalty assessment proceedings under sections 1373 and 1376 of the 1992 Act (12 U.S.C. 4633 and 4636);

(3) Civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a; and

(4) Other adjudications required by statute to be determined on the record after opportunity for hearing, except to the extent otherwise provided for in the regulations specifically governing such an adjudication.

(b) *Cease and desist orders.* (1) Grounds for instituting proceedings. Sections 1371(a)–(b) of the 1992 Act

<sup>18</sup> 12 U.S.C. 4636(f).

specify when the Director of OFHEO may issue a notice of charges instituting cease and desist proceedings, to be conducted according to the procedural rules in this part. The Director may issue a notice of charges as described in § 1780.20 if the Director determines, or the Director has reasonable cause to believe that, an Enterprise or an executive officer or director thereof has engaged in, or its is about to engage in, any of the following conduct or violations:

(i) For an adequately capitalized Enterprise, any conduct which threatens to cause a significant depletion of the Enterprise's core capital; or for an Enterprise which is not in the adequately capitalized category, any conduct that is likely to result in a material depletion of the Enterprise's core capital;

(ii) Any conduct that may result in the issuance of a cease and desist order that requires an executive officer or director of an Enterprise to make restitution, provide reimbursement, indemnification or guarantee against loss to the Enterprise, where such person was either unjustly enriched or engaged in knowing misconduct likely to cause substantial loss to the Enterprise;

(iii) Any conduct that violates a written agreement entered into by an Enterprise with the Director; or

(iv) Any conduct that violates the 1992 Act, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*), or any regulation, rule, or order under such Acts, or any unsafe and unsound practice (in that it is contrary to prudent standards of operation which might cause loss or damage to the Enterprise, or is likely to cause such loss or damage in the future if continued unabated), or any unsafe and unsound condition, except that the Director may not enforce compliance with housing goals established under subpart B of part 2 of subtitle A of the 1992 Act (12 U.S.C. 4561–4567), with section 1336 or 1337 of the 1992 Act (12 U.S.C. 4566–4567), or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 4566–4567), or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e)–(f)).

(2) *Remedial provisions of cease and desist orders.* As provided by sections 1371(c)–(d) of the 1992 Act, a cease and desist order issued as set out in § 1780.55 may require the Enterprise, or an executive officer or director thereof, to refrain from engaging in conduct or

violations specified in paragraphs (b)(1)(i) through (iv) of this section and/or require correction of an unsafe or unsound condition specified in paragraph (b)(1)(iv) of this section, as found by the Director, and may also require the Enterprise, an executive officer, or director thereof to take such action as the Director determines to be appropriate to correct or remedy the conditions resulting from such conduct or violation. This may include, but is not limited to, provisions to:

(i) Require the Enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(ii) Require the Enterprise to obtain new capital;

(iii) Restrict asset or liability growth of the Enterprise;

(iv) Require the Enterprise to dispose of any asset involved;

(v) Require the Enterprise to improve design or implementation of internal policies, compliance efforts, internal controls, risk measurement and limits, and management reporting systems;

(vi) Require the Enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director);

(vii) Require the Enterprise, an executive officer or director thereof to adhere to limits on activities or functions; or

(viii) Require the Enterprise to take such other action as the Director determines appropriate.

(3) *Restitution and indemnification by executive officers and directors.* As part of the affirmative relief described in paragraph (b)(2) of this section, section 1371(d)(1) of the 1992 Act provides that the Director may require an executive officer or director of an Enterprise to make restitution or reimbursement to the Enterprise, or to provide indemnification or guarantee against loss, to the extent such person was:

(i) Unjustly enriched in connection with the conduct or violation in question; or

(ii) Engaged in such conduct or violation knowingly, and such conduct or violation caused or would be likely to cause a substantial loss to the Enterprise.

(4) *Temporary cease and desist orders.* (i) Under sections 1372(a)–(b) of the 1992 Act, if the Director determines that any conduct or violation or threatened conduct or violation described in the notice of charges in cease and desist proceedings described under § 1780.20 is likely to cause insolvency, to cause significant depletion of core capital, or to cause other irreparable harm to an Enterprise

before proceedings described in this part will be completed, the Director may issue a temporary cease and desist order. Such order may direct the Enterprise, executive officer or director thereof to refrain from the conduct or violation, and to take whatever affirmative action the Director determines to be appropriate to prevent or remedy such insolvency, depletion, or harm pending completion of such cease and desist proceedings.

(ii) In addition, section 1372(c) of the 1992 Act addresses cases in which the Director determines that the books and records of an Enterprise are so incomplete or inaccurate that the Director is unable through normal supervisory processes to determine either the financial condition of the Enterprise or the details or purpose of transactions that may have a material effect on the financial condition of the Enterprise. In connection with issuance of the notice of charges in cease and desist proceedings specified by § 1780.20, the Director may issue a temporary order directing the Enterprise to cease the activity or practice that gave rise, whether in whole or in part, to the incomplete or inaccurate state of the records, and may require the Enterprise to take affirmative action to make the records complete and accurate.

(c) *Civil money penalties.* (1) *First tier CMPs.* Section 1736 of the 1992 Act authorizes the Director to assess civil money penalties against an Enterprise, in proceedings to be conducted according to the procedural rules in this part. The Director may issue a notice of charges to an Enterprise, as described in § 1780.20, to impose money penalties of up to \$5,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in conduct that violates:

(i) The 1992 Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any regulation, rule, or order under such Acts, except with regard to housing goals established under subpart B of part 2 of subtitle A of the 1992 Act, with section 1336 or 1337 of the 1992 Act, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

(ii) Any written agreement entered into by the Enterprise with the Director; or

(iii) Any permanent or temporary cease and desist order entered under sections 1371 or 1372 of the 1992 Act, or sections 1365 (12 U.S.C. 4615, setting out supervisory actions applicable to

undercapitalized Enterprises) or 1366 (12 U.S.C. 4616, setting out supervisory actions applicable to significantly undercapitalized institutions) of the 1992 Act.

(2) *Second tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to \$25,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in the following violation or conduct, or to an executive officer or director of an Enterprise to impose money penalties of up to \$10,000 (adjusted for inflation as described in § 1780.80) for each day such person or persons engages in the following violation or conduct, if the Director finds that the violation or conduct was either part of a pattern of misconduct or involved recklessness and causes or is likely to cause a material loss to the Enterprise:

(i) Any violation described in paragraphs (c)(1)(i) through (iii) of this section; or

(ii) Any conduct that causes or is likely to cause a loss to the Enterprise.

(3) *Third tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to \$1,000,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in a violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, or to an executive officer or director of an Enterprise to impose money penalties of up to \$100,000 (adjusted for inflation as described in § 1780.80) for each day such person or persons engages in such violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, if the Director finds that the violation or conduct was knowing and caused or is likely to cause a substantial loss to the Enterprise.

(4) *Amount of CMPs.* In determining the amount of a civil money penalty within the range of penalties described in paragraphs (c)(1) through (3) of this section, the Director may fashion sanctions in any such amount as deemed to be appropriate taking into consideration such factors as:

(i) The gravity of the violation or conduct;

(ii) Any loss or risk of loss to the Enterprise;

(iii) Any benefits received;

(iv) Any attempts at concealment;

(v) Any history of prior violations or conduct;

(vi) Any related or unrelated previous supervisory actions;

(vii) Any injury to the public;

(viii) Deterrence of future violations or conduct;

(ix) The effect of the penalty on the safety and soundness of the Enterprise;

(x) Any circumstances of hardship upon an executive officer or director;

(xi) Promptness and effectiveness of any efforts to ameliorate the consequences of the violations or conduct; and

(xii) Candor and cooperation after the fact.

(d) *Coordination with other supervisory actions.* In addition to cease and desist and/or civil money penalty proceedings under this part, the 1992 Act grants the Director other authority to take supervisory action, including requiring mandatory and discretionary supervisory actions against an Enterprise that fails to remain adequately capitalized; appointment of a conservator for an Enterprise; entering into a written agreement the violation of which is actionable through proceedings under this part, or any other formal or informal agreement with an Enterprise as may be deemed by the Director to be appropriate. Under the 1992 Act, the selection of the form of supervisory action is within the Director's discretion, and the selection of one form of action or a combination of actions does not foreclose the Director from pursuing any other supervisory action.

(e) *Proceedings against affiliates.* Under subtitle C of the 1992 Act, the Director may institute proceedings as described under this part against an affiliate of an Enterprise as well as an executive officer or director of such affiliate. An entity is affiliated with an Enterprise if the entity controls the Enterprise, is controlled by the Enterprise, or is under common control with the Enterprise. For purposes of this part, control means the ability to exercise a controlling influence over the management and policies of the entity or Enterprise, whether it be by ownership of or the power to vote a concentration of any class of voting securities, the ability to elect or appoint members of the board of directors or officers of the entity, or otherwise.

(f) *Public nature of proceedings.* As described in § 1780.6 of this part, all hearings shall be open to the public unless the Director in his discretion determines to the contrary based on public interest. The Director shall also make final orders available to the public, as well as modifications to or terminations thereof, except that the Director may determine in writing to delay public disclosure of such final orders for a reasonable time if immediate disclosure would seriously threaten the financial health or security of the Enterprise.

Dated: December 19, 2000.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 00-32782 Filed 12-26-00; 8:45 am]

BILLING CODE 4220-01-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NE-25-AD]

RIN 2120-AA64

#### Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW4000 series turbofan engines with 2nd stage high pressure turbine (HPT) air seal assembly part number (P/N) 50L976 or P/N 50L960 installed. This proposal would require operators to recalculate 2nd stage HPT air seal assembly cycles-in-service, based on flight hour-to-cycle ratio usage. This proposal would also require upon recalculation, initial and repetitive on-wing borescope inspections of 2nd stage HPT air seal assemblies for cracks based on the newly calculated service life. This proposal would also require the removal from service of any cracked seal assemblies, and the removal of seal assemblies at or before newly calculated service life limits. This proposal is prompted by reports that thirteen 2nd stage HPT air seal assemblies have been found cracked in the rim area. The actions specified by the proposed AD are intended to prevent 2nd stage HPT air seal assembly fracture that could result in an uncontained engine failure.

**DATES:** Comments must be received by February 26, 2001.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-NE-25-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8



payment or partial payment on or before the date it is due.

#### § 1701.6 Delinquent payments.

(a) The Director may assess interest and penalties on delinquent semiannual payment or partial payments collected under this part in accordance with 31 U.S.C. 3717 (Interest and Penalty on Claims) and 12 CFR part 1704 (debt collection). The Director may waive interest and penalties in his or her discretion.

(b) Any interest and penalties collected under this section shall be transferred to the general fund of the Treasury of the United States.

#### § 1701.7 Enforcement of payment.

Notwithstanding § 1701.6, the Director may enforce the payment of assessments under this part pursuant to the authorities of sections 1371 (cease-and-desist proceedings) (12 U.S.C. 4631), 1372 (12 U.S.C. 4632) (temporary cease-and-desist orders), and 1376 (12 U.S.C. 4636) (civil money penalties) of the Act.

#### § 1701.8 Deposit in fund.

OFHEO shall deposit annual assessments collected under this part in the Federal Housing Enterprise Oversight Fund established in the Treasury of the United States.

Dated: December 19, 2000.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 00-32780 Filed 12-26-00; 8:45 am]

BILLING CODE 4220-01-U

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1770

RIN 2550-AA13

#### Executive Compensation

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight ("OFHEO") solicits comments on this proposal to adopt a regulation to clarify the procedures OFHEO employs in overseeing compensation provided by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, "the Enterprises") to their executive officers. The proposed regulation would largely

formalize processes currently used by OFHEO in performing its executive compensation oversight responsibilities. The processes require the submission of relevant information by the Enterprises on a timely basis to enable OFHEO to efficiently carry out its executive compensation functions.

**DATES:** Written comments regarding the Notice of Proposed Rulemaking must be received on or before March 27, 2001.

**ADDRESSES:** Comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at <http://www.ofheo.gov>. OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5" disk. Alternatively, comments may be submitted via electronic mail to: [RegComments@ofheo.gov](mailto:RegComments@ofheo.gov).

**FOR FURTHER INFORMATION CONTACT:** Christine C. Dion, Associate General Counsel, telephone (202) 414-3838 (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. Statutory Framework

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" (the "Act"),<sup>1</sup> established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. Generally, OFHEO is the safety and soundness regulator of two of the nation's largest housing-related government sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises"). In addition to establishing OFHEO, the Act made amendments to the Enterprises' enabling statutes (collectively, the

"charter acts"),<sup>2</sup> in part to accommodate OFHEO's statutory supervisory powers.

Included in the supervisory responsibilities of the Director of OFHEO (the "Director") is oversight of compensation provided by the Enterprises to their respective executive officers. Briefly, the Director's statutory oversight of executive compensation involves two statutory mandates: (1) the prohibition of excessive compensation, as required by the Act; and (2) the prior review of termination benefits, as required by the charter acts. Notably, the differing statutes use similar but not identical terms in delineating the standards and identifying the different comparator groups to be used in these matters.

Specifically, the Act requires the Director to prohibit the Enterprises from providing compensation to any executive officer that is not reasonable and comparable with that paid by similar businesses to executives doing similar work. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies.<sup>3</sup>

The charter acts were amended by the Act to similarly provide that an Enterprise may only pay compensation that it determines is reasonable and comparable with compensation for employment in other similar businesses, and that the Enterprise must report annually to Congress on the comparability of the compensation policies for their employees with the compensation policies of other similar businesses.<sup>4</sup> The Enterprises have the general power to select the individuals who will work for them and to set their specific compensation. The Act explicitly provides that OFHEO may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises.<sup>5</sup>

To effectuate OFHEO's charge to prohibit excessive compensation, the Act empowers OFHEO to take such actions and perform such functions as the Director determines to be necessary.<sup>6</sup> OFHEO may also require an Enterprise to submit reports and special reports as deemed appropriate and in such form as the Director may require.<sup>7</sup> Moreover, OFHEO has express statutory

<sup>2</sup> Federal National Mortgage Association Charter Act (12 U.S.C. 1716-1723i) and Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451-1459).

<sup>3</sup> Section 1318(a) (12 U.S.C. 4518(a)).

<sup>4</sup> Section 309(d)(2) and (3) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(2) and (3)) and section 303(c) and (h) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(c) and (h)).

<sup>5</sup> Section 1318(b) (12 U.S.C. 4518(b)).

<sup>6</sup> Section 1313(8) (12 U.S.C. 4513(8)).

<sup>7</sup> Section 1314(a) (12 U.S.C. 4514(a)).

<sup>1</sup> 12 U.S.C. 4501 *et seq.*

authority to retain any consultant that the Director determines is necessary to assist in such matters.<sup>8</sup> The Act also grants OFHEO a wide array of enforcement powers. Thus, without regard to the capital condition of an Enterprise, the Director can issue a notice of charges, or take such other enforcement action, for conduct violative of the compensation provisions of the Act, the charter acts or this regulation.<sup>9</sup> The Director can require an Enterprise, or any executive officer or member of the board of directors to correct or remedy any violation as the Director determines to be appropriate.<sup>10</sup>

In addition to prohibiting the payment of excessive executive compensation, OFHEO is empowered to approve individual termination packages provided by the Enterprises to their executive officers. The respective charter acts of the Enterprises were identically amended by the Act to provide that an Enterprise may not enter into an agreement or contract to provide for payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by OFHEO.<sup>11</sup> The Act further amended the charter acts to prohibit the Director from approving termination benefits that are not comparable to such benefits provided by other businesses to executives doing similar work. Businesses used for comparison purposes include public and private entities involved in financial services and housing.

These amendments to the charter acts were effective after October 28, 1992. Therefore, agreements to provide termination payments to executives that were entered into before that date are not explicitly subjected to retroactive review for approval or disapproval by OFHEO. However, the amended charter acts provide that any subsequent renegotiation, amendment or change to any such agreement entered into on or before October 28, 1992, is to be considered as entering into an agreement subject to approval by OFHEO. An extension of such an agreement is deemed to constitute a change subject to OFHEO's prior approval. OFHEO's approval is required

regardless of how such an extension is structured, e.g., by a written agreement or by a resolution adopted by the board of directors of the Enterprise.

The requirement that OFHEO receive and approve termination provisions before an agreement or change is effective may be met when new executive officers are hired or contracts and agreements with existing executive officers are amended if such contracts or agreements contain a provision noting that termination benefits provided under the agreements are not effective until approved by OFHEO.

The term "executive officer" for these purposes is defined to include an Enterprise's chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman and any executive vice president, as well as any senior vice president (SVP) "in charge of a principal business unit, division or function."<sup>12</sup> The Director has also found the term to include any individual who acts as the chief operating officer of an Enterprise. Additionally, the term "executive officer" includes any individual who performs functions similar to such positions, whether or not the individual has an official title.

For purposes of this regulation, the term "executive officer" includes any SVP in charge of a principal business unit, division or function as well as any individual, however titled, who has similar authority. A reading of the statute joined with an analysis of job functions at the Enterprises could lead to a reasonable determination that all current senior vice presidents are subject to the provisions of this section. If an individual is identified by an Enterprise in public disclosures as being an "executive officer," a presumption shall exist that such individual is an executive officer for these purposes. The Act's use of qualifying language in defining "executive officer" suggests that Congress intended OFHEO to classify covered individuals on a functional basis, rather than solely on a basis of title. That is, any officer or

employee who participates or has authority to participate in major policymaking functions is deemed to be an executive officer, regardless of his or her title. Notably, the indicia of a major policymaking function may include the authority to control substantial resources or expend substantial funds of an Enterprise. A major policymaking function is not limited to a revenue-generating function.

The Act defines the term "compensation" to include "any payment of money or the provision of any other thing of current or potential value in connection with employment."<sup>13</sup> [Emphasis added.] The legislative history of the Act, demonstrates that the term is to be defined broadly.<sup>14</sup> OFHEO's analysis of an executive officer's compensation reasonably includes factors that are weighed by federal bank regulators in similarly assessing compensation issues. The definition of "compensation" adopted by the federal banking agencies is all-inclusive, encompassing all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer including, but not limited to, payments and benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post employment benefit or other compensatory arrangement.<sup>15</sup>

## II. Background

The legislative history of the Act and that of contemporaneously enacted federal banking legislation reveal that Congress viewed executive compensation to be a serious matter of safety and soundness concern. In discussing the need for oversight of the executive compensation provided by the Enterprises, the congressional sponsor of language relating to executive compensation explicitly referred to similar legislation earlier enacted in the same Congress to require the federal bank regulators to adopt safety and soundness standards affecting, among other things, executive compensation paid by insured banks and thrift institutions, as well as their parent

<sup>12</sup> Section 1303(7) (12 U.S.C. 4502(7)). The terminology used in defining an "executive officer" under OFHEO's statute is essentially similar to the definition of "executive officer" and "officer" contained in the reporting rules of the Securities and Exchange Commission (SEC). See SEC Rule 3b-7 (17 CFR 240.3b-7) and SEC Rule 16a-1(f) (17 CFR 240.16a-1(f)) (1999). See also Note to Rule 16a-2. For purposes of provisions in the Charter Acts relating to compensation, the term "executive officer" has the meaning given the term in section 1303 of OFHEO's statute. See section 309(d)(3)(C) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(3)(C)) and section 303(H)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(h)(3)).

<sup>8</sup> Section 1315(e) (12 U.S.C. 4515(e)).

<sup>9</sup> Section 1371(a)(3) (12 U.S.C. 4631) and section 1372 (12 U.S.C. 4632).

<sup>10</sup> Section 1371(d)(7) (12 U.S.C. 4631(d)(7)).

<sup>11</sup> Section 309(d)(3)(B) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(3)(B)) and section 303(h)(2) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(h)(2)).

<sup>13</sup> Section 1303(3) (12 U.S.C. 4502(3)).

<sup>14</sup> See, e.g., Floor discussion on S. 2733 by Senator Levin at 138 Cong. Rec. S. 17923 (October 8, 1992).

<sup>15</sup> See the definitional section of the safety and soundness standards of the Office of the Comptroller of the Currency at 12 CFR Part 30, App. A; the Board of Governors of the Federal Reserve System at 12 CFR Part 208, App. D-1; the Federal Deposit Insurance Corporation at 12 CFR Part 364, App. A and the Office of Thrift Supervision at 12 CFR Part 570, App. A.

holding companies.<sup>16</sup> The statutory authorities of OFHEO and the banking agencies, however, are not identical in this regard.<sup>17</sup> OFHEO treats as an unsafe and unsound practice any compensation arrangement that would result in an executive of an Enterprise receiving compensation that is excessive or termination benefits that are not comparable to compensation provided by other businesses to executives doing similar work.

With respect to its statutory mandate to prohibit excessive executive compensation, OFHEO evaluates all aspects of each Enterprise's executive compensation practices and policies, and periodically undertakes a study to compare compensation of executives at the Enterprises with compensation of executives in other similar businesses (including other publicly held financial institutions or major financial services companies). OFHEO separately reviews termination benefit packages submitted by the Enterprises under the prior approval requirements of the charter acts.

In order to carry out its executive compensation responsibilities, OFHEO requires each Enterprise to make timely submissions of relevant information to OFHEO on both routine and episodic bases.<sup>18</sup> Practice and procedures reflected in this rule have evolved over time. As noted in § 1770.2 of the proposed rule, the purposes of this regulation are to formalize the existing process and to clarify the terms used therein in order to facilitate the routine conduct and enhance the efficiency of OFHEO's procedures.

OFHEO's executive compensation authorities are recited in § 1770.1 of the proposed rule. Definitions applicable to terms used in the proposed rule are enumerated in § 1770.3. Reporting and submission requirements are set forth in § 1770.4.

Specifically, paragraph (a) of § 1770.4 identifies to whom an Enterprise is to make timely submission of relevant information in such fashion as specified by OFHEO. Paragraph (b) lists the categories of information to be provided by the Enterprise to OFHEO. Paragraph (c) sets out when information relevant to the Director's prior approval of termination benefits should be submitted by an Enterprise to OFHEO.

Paragraph (d) specifies what information the Enterprise is to submit and when it must be submitted in order for OFHEO to calculate an executive officer's total termination or severance benefits package.

Section 1770.5 of the proposed rule addresses compliance requirements. Paragraph (a) codifies current practices to require that certain employment agreements expressly state that termination benefits provided therein are not to be effective until approved by the OFHEO. Additionally, the section provides that disclosures to employees should note that alteration of benefit plans that affect the benefits accorded a covered employee, that occur subsequent to OFHEO approval of a termination package, will require OFHEO review of the termination agreement at the time a covered employee terminates their relation with the Enterprise. Paragraph (b) requires the Enterprises to establish written procedures implementing the submission requirements of section 1770.4. Paragraph (c) states that failure by an Enterprise to comply with the requirements of paragraph (a) or (b) of section 1770.5 or the submission requirements of section 1770.4 may be deemed to be an unsafe or unsound practice warranting specific corrective action. Paragraph (d) of section 1770.5 provides that OFHEO may require corrective or remedial action under this regulation by an Enterprise or individual either separately from, in conjunction with, or in addition to any other remedy, or an enforcement action.

### Regulatory Impact

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

This proposed rule is not deemed to be a significant rule under Executive Order 12866 because it will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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 and this proposed rule has not been submitted to the Office of Management and Budget for review.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule 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 proposed rule under the Regulatory Flexibility Act. The General Counsel certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

### *Paperwork Reduction Act*

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### *Unfunded Mandates Reform Act of 1995*

This proposed rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this rule implements specific statutory requirements. In addition, this rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

### **List of Subjects in 12 CFR Part 1770**

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, OFHEO proposes to add 12 CFR part 1770 to read as follows:

### **PART 1770—EXECUTIVE COMPENSATION**

#### Sec.

- 1770.1 Authority and scope.
- 1770.2 Purpose.
- 1770.3 Definitions.
- 1770.4 Submissions requirements.
- 1770.5 Compliance.

**Authority:** 12 U.S.C. 1452(h)(2), 1723a(d)(3)(B), 4501(6), 4502(3), 4502(7),

<sup>16</sup> See note 15 at 17922–17923.

<sup>17</sup> See note 16. The agencies' safety and soundness standards were adopted in 1992 pursuant to section 39 (12 U.S.C. 1831p–1) of the Federal Deposit Insurance Act (FDIA).

<sup>18</sup> OFHEO recognizes the sensitive, nonpublic nature of such information and treats submissions with appropriate safeguards under its internal procedures and regulations.

4513, 4514, 4517, 4518(a), 4631, 4632, 4636, 4641.

**§ 1770.1 Authority and scope.**

(a) *Authority.* Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*), established the Office of Federal Housing Enterprise Oversight (“OFHEO”) as an independent office within the Department of Housing and Urban Development. In general, OFHEO is the safety and soundness regulator of two housing-related government sponsored enterprises: the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, “the Enterprises”). The supervisory responsibilities of the Director of OFHEO (the “Director”) include oversight of compensation provided by the Enterprises to their executive officers.

(b) *Scope.* The procedures set forth in this regulation apply to the OFHEO’s oversight of executive compensation under the following two statutory mandates:

(1) *Prohibition of excessive compensation.* The Act empowers the Director to prohibit an Enterprise from providing compensation to any executive officer that is not reasonable and comparable with that paid by other similar businesses to executives doing similar work, *i.e.*, having similar duties and responsibilities. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies. (12 U.S.C. 4518(a)) To effectuate this compensation oversight responsibility, the Act provides that the Director has full authority to take such actions as the Director determines are necessary. (12 U.S.C. 4513(8)) However, the Director may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises. (12 U.S.C. 4518(b))

(2) *Prior approval of termination benefits.* The Enterprises’ enabling statutes (“charter acts”) provide that the Enterprises may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by the Director. The Director may only approve termination benefits that are comparable to benefits provided by other businesses to executives doing similar work. Businesses used for

comparison purposes include public and private entities involved in financial services and housing interests. Agreements or contracts that provide for termination payments to executives that were entered into before October 28, 1992 are not retroactively subject to approval or disapproval by the Director. However, a renegotiation, amendment or change to such an agreement or contract entered into on or before October 28, 1992 shall be considered as entering into an agreement or contract that is subject to approval by the Director. (Section 309(d)(3)(B); 12 U.S.C. 1723a(d)(3)(B) of Fannie Mae’s Charter Act; Section 303(h)(2); 12 U.S.C. 1452(h)(2) of Freddie Mac’s Corporation Act)

**§ 1770.2 Purpose.**

In exercising responsibilities related to executive compensation, the Director has established a structured process for the submission of relevant information by each Enterprise. This part codifies those procedures and clarifies the terms used therein in order to facilitate the routine conduct and enhance the efficiency of OFHEO’s oversight.

**§ 1770.3 Definitions.**

The following definitions apply to the terms used in this part:

(a) *The Act* is Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, Oct. 28, 1992, 106 Stat. 3672, 3941-4012 (1993), separately entitled the “Federal Housing Enterprises Financial Safety and Soundness Act of 1992.”

(b) *Affiliate* means any entity that controls, is controlled by, or is under common control with, an Enterprise.

(c) *Charter acts* mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716-1723i and 12 U.S.C. 1451-1459, respectively.

(d) *Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment.

Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer, including, but not limited to, payments and benefits derived from an employment contract compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post employment benefit or other compensatory arrangement

(e) *Director* means the Director of OFHEO or his or her designee.

(f) *Enterprise* means the Federal National Mortgage Association and the

Federal Home Loan Mortgage Corporation and, except as provided by the Director, any affiliate thereof.

(g) *Executive officer* means, with respect to an Enterprise:

(1) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairman, any executive vice president, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

(2) Any senior vice president (SVP) or other individual with similar responsibilities, without regard to title:

(i) Who is in charge of a principal business unit, division or function, or

(ii) who reports directly to the Enterprise’s Chair, Vice Chair, Chief Operating Officer or President.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

**§ 1770.4 Submission requirements.**

(a) *Submission of information to OFHEO.* All information required to be filed for purposes of this regulation is to be provided in a timely fashion by each Enterprise to OFHEO’s Associate Director of the Office of Policy Analysis and Research, as specified in this section, or as designated by the Director.

(b) *Categories of information relating to prohibition of excessive compensation.* The following materials shall be provided by each Enterprise to OFHEO for review:

(1) Minutes and supporting materials and reports from meetings of the Enterprise’s Committee responsible for compensation within a week of Committee approval, where Committee actions are final insofar as affecting a determination regarding a compensation matter, except reports on the performance of specific individuals;

(2) Portions of minutes of the Board of Directors relating to executive compensation and supporting materials of the Committee responsible for compensation (not otherwise provided to OFHEO by the Committee under paragraph (b)(1) of this section), within a week of the meeting of the Board of Directors;

(3) General benefit plans applicable to covered executive officers when adopted or amended;

(4) Any studies the Enterprise conducts or contracts for with respect to compensation of executive officers when finalized;

(5) The Enterprise’s annual compensation report when submitted to Congress;

(6) An updated organization chart as changes occur affecting executive officers;

(7) Proxy statements when issued;  
 (8) Information regarding the hiring of and payment of compensation to an executive officer for whom a contract remains under negotiation; and

(9) Such other information as deemed appropriate by the Director.

(c) *Timing of submissions related to prior approval requests of termination benefits.* All relevant information should be provided to OFHEO when an Enterprise:

(1) Enters into any agreement or contract with a new or existing executive officer that includes termination benefits;

(2) Makes any extension or other amendment to such an agreement or contract;

(3) Takes any other action to provide termination benefits to a specific executive officer, regardless of how it is effected;

(4) Makes any changes in post-employment benefit programs affecting multiple executive officers; or

(5) Changes the termination provisions of other compensation programs affecting multiple executive officers.

(d) *Specific information required for calculation of termination benefits.*

Before entering into an agreement or contract to provide termination benefits to an executive officer, and before any renegotiation, amendment or change to such an agreement or contract, an Enterprise shall submit to OFHEO the following materials:

(1) The details of the agreement or program change, *e.g.*, employment agreements, termination agreements, severance agreements, and portions of Board minutes relating to executive compensation and minutes and supporting materials of the compensation committee of the Board;

(2) All information, data, assumptions and calculations for the potential total dollar value or range of values of the benefits provided, such as but not limited to salary, bonus opportunity, short-term incentives, long-term incentives, special incentives and pension provisions or related contract or benefit terms; and

(3) Such other information deemed appropriate by the Director.

#### § 1770.5 Compliance

(a) An employment agreement or contract subject to the Director's prior approval, as set forth in § 1770.1(b)(2), may be entered into prior to that approval, *provided that* such agreement or contract specifically provides that termination benefits under the agreement or contract shall not be effective and no payments shall be made

thereunder unless and until approved by OFHEO. Such notice should make clear that alteration of benefit plans subsequent to OFHEO approval under this section, that affect final termination benefits of an executive officer, requires review at the time of the individual's termination from the Enterprise and prior to the payment of any benefits.

(b) The Enterprises shall establish and follow written procedures implementing the submission requirements contained in § 1770.4 within 60 days of the effective date of this regulation.

(c) Failure by an Enterprise to comply with the requirements of paragraph (a) or (b) of this section or the submission requirements of § 1770.4 may be deemed to constitute an unsafe or unsound practice warranting corrective or remedial action by OFHEO.

(d) Action by OFHEO under this regulation may be taken separately from, in conjunction with, or in addition to any other corrective or remedial action, including an enforcement action to require an individual to make restitution to or reimbursement to the Enterprise of improperly paid compensation or termination benefits.

Dated: December 19, 2000.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 00-32781 Filed 12-26-00; 8:45 am]

**BILLING CODE 4220-01-U**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1780

**RIN 2550-AA16**

#### Rules of Practice and Procedure

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) solicits comment on proposed amendments to OFHEO's rules governing administrative enforcement proceedings. The amendments summarize OFHEO's statutory authority to issue cease and desist orders and to impose various corrective and remedial sanctions, including, among other things, civil money penalties, against the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), as well as their executive officers and directors. By describing the grounds on

which such actions might be instituted, and providing examples of the terms and conditions the agency might impose, OFHEO seeks to ensure greater transparency to the agency's supervisory regime and the safeguards affecting Freddie Mac and Fannie Mae.

**DATES:** Written comments on the proposed rule must be received by February 26, 2001.

**ADDRESSES:** All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at <http://www.ofheo.gov>. OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5" disk. Alternatively, comments may be submitted via electronic mail to: [RegComments@ofheo.gov](mailto:RegComments@ofheo.gov).

#### FOR FURTHER INFORMATION CONTACT:

David W. Roderer, Deputy General Counsel, (202) 414-6924, Jamey Basham, Counsel (202) 414-8906 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877-8339 (TDD *only*).

#### SUPPLEMENTARY INFORMATION:

##### Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development (HUD) with responsibility for ensuring that Fannie Mae and Freddie Mac (collectively, the Enterprises) are adequately capitalized and operate safely and in conformity to the requirements of applicable laws, rules and regulations, including their respective charter acts. The Enterprises are Government-sponsored corporations established under Federal law to effect specific public purposes.<sup>1</sup> These include providing liquidity to the residential mortgage market and promoting the availability of mortgage

<sup>1</sup> See Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; Act at 12 U.S.C. 4561-67, 4562 note.

# Proposed Rules

Federal Register

Vol. 65, No. 249

Wednesday, December 27, 2000

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.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1701

#### RIN 2550-AA15

#### Assessments

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

**ACTION:** Proposed regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight is proposing a regulation setting forth its policy and procedures with respect to the annual assessment of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation as provided by statute.

**DATES:** Written comments on the proposed regulation must be received by January 26, 2001.

**ADDRESSES:** Send written comments concerning the proposed regulation to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Written comments may also be sent to Mr. Pollard by electronic mail at RegComments@OFHEO.gov. OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word © or in portable document format (PDF) on 3.5" disk.

**FOR FURTHER INFORMATION CONTACT:** Isabella W. Sammons, Associate General Counsel, telephone (202) 414-3790, (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:

#### Comments

OFHEO requests comments from the public and will take all comments into

consideration before issuing the final regulation. Copies of all comments will be posted on the OFHEO Internet web site at <http://www.ofheo.gov>. In addition, copies of all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

#### Background

Title XIII of the Housing and Community Development Act of 1992, Pub.L. No. 102-550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act), 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.

Section 1316 of the Act (12 U.S.C. 4516) provides that OFHEO may establish and collect annual assessments from the Enterprises. OFHEO has been assessing the Enterprises pursuant to section 1316 and proposes to set forth its policies and procedures with respect to such assessments in the proposed regulation.

#### Section-by-Section Analysis

##### Section 1701.1 Purpose

This section states that the purpose of the proposed regulation is to set forth the policy and procedures of OFHEO with respect to the annual assessments of the Enterprises under section 1316 of the Act. The Act provides for an initial annual assessment for the startup costs of OFHEO; however, since the initial annual assessment has been collected and OFHEO no longer has start up costs, the initial annual assessment is not addressed in the proposed regulation.

##### Section 1701.2 Definitions

Section 1701.2 sets forth the definition of terms used in the proposed regulation.

The term "Act" is defined to mean the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Pub.L. No.

102-550, § 1301, Oct. 28, 1992, 106 Stat. 3672, 3941-4012 (1993).

The term "adequately capitalized" is defined to mean the adequately capitalized capital classification under section 1364 of the Act (12 U.S.C. 4614). It is used in proposed § 1701.4.

The term "Director" is defined to mean the Director of the Office of Federal Housing Enterprise Oversight or his or her designee. The Director may delegate his or her authority under section 1316 of the Act to officers or employees of OFHEO.

The term "Enterprise" is defined to mean the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

The term "surplus funds" is defined to mean funds, which were collected from an Enterprise in connection with an annual assessment, that are unobligated as of September 30 of each fiscal year. Appropriated funds of OFHEO are available for obligation and expenditure for an indefinite period without fiscal year limitation. Notably, section 1316(d) of the Act (12 U.S.C. 4516(d)) requires the crediting of surplus funds that are "unobligated at the end of the year for which the assessment was collected." Any unobligated funds remaining as of September 30, regardless when they were collected, should be treated as surplus funds and credited to the annual assessment.

The term "total assets" is used in § 1701.3(b) of the proposed regulation in connection with the calculation of the proportional amount of the annual assessment of each Enterprise. The definition of the term "total assets" is broader than the definition of the term "total assets" in section 1316(b)(3) of the Act (12 U.S.C. 4516(b)(3)) in that it lists the types of other off-balance sheet assets to be used in the calculation of total assets. The assets used to calculate total assets for purposes of the annual assessment are the same as the assets used to calculate the minimum capital level of an Enterprise under 12 CFR part 1750, subpart A. The proposed regulation defines the term as the sum, as of the June quarterly minimum capital report of the Enterprise under 12 CFR part 1750, subpart A, of the on-balance-sheet-assets, as adjusted in the June quarterly minimum capital report under 12 CFR part 1750, subpart A; the unpaid principal balance of outstanding

mortgage-backed securities issued or guaranteed by the Enterprise that are not included in on-balance-sheet assets; one-half of the average dollar amount of commitments outstanding each quarter over the preceding four quarters; the sum of the credit-equivalent amounts for interest rate contracts; the unpaid principal balance of other guaranteed obligations, such as multifamily credit enhancements; other guaranteed amounts, such as sold portfolio remittances pending; and other off-balance-sheet obligations, as determined by the Director.

The term "OFHEO" is defined to mean the Office of Federal Housing Enterprise Oversight.

#### *Section 1701.3 Annual Assessments*

Paragraph (a) of proposed § 1701.3 sets forth the authority of the Director to establish and collect assessments under section 1316(a) of the Act (12 U.S.C. 4516(a)). As provided in section 1316(a) and (f) of the Act (12 U.S.C. 4516(a) and (f)), the proposed regulation provides that the Director may, to the extent provided in appropriation acts, establish and collect from the Enterprises an annual assessment for each fiscal year. It further indicates that the amount of the annual assessment shall not exceed the estimated amount to be sufficient to provide for the necessary administrative and non-administrative expenses to carry out the responsibilities of the director relating to the Enterprises and to carry out the purposes of the Act.

Paragraph (b) of proposed § 1701.3 reiterates the statutory formula in section 1316(b) of the Act (12 U.S.C. 4516(b)) for determining how the annual assessment is to be allocated between the Enterprises. The allocation for each Enterprise is the proportion of the annual assessment that bears the same ratio to the total annual assessment as the total assets of each Enterprise bears to the total assets of both Enterprises. The term "total assets" is defined in proposed § 1701.2.

Section 1316(b)(2) of the Act (12 U.S.C. 4516(b)(2)) requires the Enterprises to pay their proportional share of the annual assessment in semiannual payments on or before October 1 and April 1 of each fiscal year. Paragraph (c)(1) of proposed § 1701.3 restates this requirement and clarifies that one-half of the proportional share of the annual assessment is to be paid in each semiannual payment.

Paragraph (c)(2) of proposed § 1701.3 also explains how the semiannual payments are to be handled in the event OFHEO does not have a regular appropriation as of October 1 of any

year. When legislative action on a regular appropriation bill is not completed before the beginning of a fiscal year, a continuing appropriation (also called a continuing resolution) may be enacted to provide funding for the affected agencies until their regular appropriations are enacted. In such a situation, each Enterprise is to pay, by such date as determined by the Director, an amount that is determined by applying the annual assessment proportion calculated pursuant to paragraph (b) of proposed § 1701.3 to the amount authorized by the Office of Management and Budget (OMB). After OFHEO receives a regular appropriation, the amount of the proportional share of the annual assessment collected from each Enterprise is to be reduced by the partial payments made by each Enterprise in connection with any continuing appropriations. In the event there is no continuing appropriation as of October 1 of any fiscal year, OFHEO would continue to operate if authorized by OMB to use funds remaining from the prior fiscal year assessment.

Paragraph (d) of proposed § 1701.3 provides that the annual assessment is to be credited by the amount of any surplus funds, a requirement which is set forth in section 1316(d) of the Act (12 U.S.C. 4516(d)). Paragraph (d) also provides that surplus funds are to be allocated in the same proportion in which they were collected, except as determined by the Director. The term "surplus funds" is defined in proposed § 1701.2.

#### *Section 1701.4 Increase in Semiannual Payments*

Proposed § 1701.4 sets forth the authority of the Director under section 1316(c) of the Act (12 U.S.C. 4516(c)) to provide for an increase in the semiannual payments made by an Enterprise that is not classified as "adequately capitalized," as that term is defined in proposed § 1701.2. The funds collected under this provision are to be deposited in the Federal Housing Enterprise Oversight Fund, but are not to be considered funds appropriated by Congress.

#### *Section 1701.5 Notice and Review*

Paragraph (a) of proposed § 1701.5 codifies the OFHEO practice of providing the Enterprises with written notice of the annual assessment, semiannual payments, any partial payments, and any changes in the assessment procedures.

Paragraph (b) of proposed § 1701.5 provides that, at the written request of an Enterprise, the Director, in his or her

discretion, may review the calculation of the Enterprise's proportional share of the assessment, semiannual payments or partial payments. The determination of the Director is final. Review by the Director does not suspend the obligation of the Enterprise to make the semiannual payment or partial payment on or before the date it is due, except as provided by the Director.

#### *Section 1701.6 Delinquent Payments*

This section of the proposed regulation reiterates the statutory requirements with respect to the assessment of interest and penalties on delinquent payments. It provides that the Director may assess interest and penalties on delinquent payments of any assessment under this part in accordance with 31 U.S.C. 3717 (interest and penalties on claims) and 12 CFR part 1704 (debt collection). The Director may waive interest and penalties in his or her discretion. Any interest and penalties collected under this section are to be transferred to the general fund of the Treasury of the United States.

#### *Section 1701.7 Enforcement of Payment*

Proposed § 1701.7 provides that notwithstanding § 1701.6, the Director may enforce the payment of assessments pursuant to the authority of section 1371 (12 U.S.C. 4631) (cease-and-desist proceedings); section 1372 (12 U.S.C. 4632) (temporary cease-and-desist orders), and section 1376 (12 U.S.C. 4636) (civil money penalties) of the Act. These sections authorize the Director to take enforcement actions for violations of any provisions of the Act.

#### *Section 1701.8 Deposit in Fund*

As provided in 1316(f) of the Act (12 U.S.C. 4516(f)), this section of the proposed regulation would require that OFHEO deposit any assessments collected under this part in the Federal Housing Enterprise Oversight Fund established in the Treasury of the United States.

### **Regulatory Impact**

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

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it will 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 and this proposed regulation has not been submitted to the Office of Management and Budget for review.

#### *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 the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if 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.

#### **List of Subjects in 12 CFR Part 1701**

Government Sponsored Enterprises, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to add 12 CFR part 1701 as follows:

#### **PART 1701—ASSESSMENTS**

Sec.

- 1701.1 Purpose.
- 1701.2 Definitions.
- 1701.3 Annual assessments.
- 1701.4 Increase in semiannual payments.
- 1701.5 Notice and review.
- 1701.6 Delinquent payments.
- 1701.7 Enforcement of payment.
- 1701.8 Deposit in fund.

**Authority:** 12 U.S.C. 4516.

##### **§ 1701.1 Purpose.**

This part sets forth the policy and procedures of OFHEO with respect to the establishment and collection of the annual assessments of the Enterprises under section 1316 of the Act.

##### **§ 1701.2 Definitions.**

For purposes of this part, the term—

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the

Housing and Community Development Act of 1992, Pub.L. No. 102–550, § 1301, Oct. 28, 1992, 106 Stat. 3672, 3941–4012 (1993).

(b) *Adequately capitalized* means the adequately capitalized for purposes of the capital classification under section 1364 of the Act (12 U.S.C. 4614).

(c) *Director* means the Director of the Office of Federal Housing Enterprise Oversight or his or her delegate.

(d) *Enterprise* means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(e) *Surplus funds* means the funds from any annual assessment collected from an Enterprise that are not obligated as of September 30 of each fiscal year.

(f)(1) *Total assets* means the sum, as of the June quarterly minimum capital report of the Enterprise under 12 CFR part 1750, subpart A, of:

(i) On-balance-sheet assets, as adjusted in the June quarterly minimum capital report of the Enterprise under 12 CFR part 1750, subpart A;

(ii) The unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the Enterprise that are not included in on-balance-sheet assets;

(iii) One-half of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;

(iv) The sum of the credit-equivalent amounts for interest rate contracts;

(v) The unpaid principal balance of other guaranteed obligations, such as multifamily credit enhancements;

(vi) Other guaranteed amounts, such as sold portfolio remittances pending; and

(vii) Other off-balance-sheet obligations as determined by the Director.

(g) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

##### **§ 1701.3 Annual assessments.**

(a) *Establishment of assessment.* The Director may, to the extent provided in appropriation acts, establish and collect from the Enterprises an annual assessment for each fiscal year, as allocated under paragraph (b) of this section. The amount of the annual assessment shall not exceed the estimated amount to be sufficient to provide for the necessary administrative and non-administrative expenses to carry out the responsibilities of the Director relating to the Enterprises and to carry out the purposes of the Act.

(b) *Allocation and proportional share.* The annual assessment established under paragraph (a) of this section shall be allocated between the Enterprises.

Each Enterprise shall pay a proportional share of the annual assessment that bears the same ratio to the total annual assessment as the total assets of each Enterprise bears to the total assets of both Enterprises.

(c) *Timing of payment.* (1) Each Enterprise shall pay one-half of its proportional share of the annual assessment in semiannual payments on or before October 1 and April 1 for each fiscal year, except as provided in paragraph (d) of this section and § 1701.4.

(2) If OFHEO is operating under a continuing appropriation as of October 1 of any year, each Enterprise shall pay, on such date as determined by the Director, an amount calculated by applying the annual assessment proportion calculated under paragraph (b) of this section to the amount authorized for expenditure. When OFHEO receives a regular appropriation, the amount of the allocation share of the annual assessment collected from each Enterprise shall be reduced by any partial payments made by each Enterprise in connection with any continuing appropriations.

(d) *Surplus funds.* Surplus funds shall be credited to the annual assessment by reducing the amount collected by the amount of the surplus funds. Surplus funds shall be allocated in the same proportion as they were collected, except as determined by the Director.

##### **§ 1701.4 Increase in semiannual payments.**

The Director, in his or her discretion, may increase the semiannual payment to be collected under § 1701.3 from an Enterprise that is not classified as adequately capitalized.

##### **§ 1701.5 Notice and review.**

(a) The Director shall provide each Enterprise with written notice of the annual assessment, the semiannual payments and any partial payments to be collected under this part. In addition, the Director shall provide each Enterprise with written notice of any changes in the assessment procedures that the Director, in his or her sole discretion, deems necessary under the circumstances.

(b) At the written request of an Enterprise, the Director, in his or her discretion, may review the calculation of the proportional share of the annual assessment, the semiannual payments and any partial payments to be collected under this part. The determination of the Director is final. Except as provided by the Director, review by the Director does not suspend the requirement that the Enterprise make the semiannual



payment or partial payment on or before the date it is due.

#### § 1701.6 Delinquent payments.

(a) The Director may assess interest and penalties on delinquent semiannual payment or partial payments collected under this part in accordance with 31 U.S.C. 3717 (Interest and Penalty on Claims) and 12 CFR part 1704 (debt collection). The Director may waive interest and penalties in his or her discretion.

(b) Any interest and penalties collected under this section shall be transferred to the general fund of the Treasury of the United States.

#### § 1701.7 Enforcement of payment.

Notwithstanding § 1701.6, the Director may enforce the payment of assessments under this part pursuant to the authorities of sections 1371 (cease-and-desist proceedings) (12 U.S.C. 4631), 1372 (12 U.S.C. 4632) (temporary cease-and-desist orders), and 1376 (12 U.S.C. 4636) (civil money penalties) of the Act.

#### § 1701.8 Deposit in fund.

OFHEO shall deposit annual assessments collected under this part in the Federal Housing Enterprise Oversight Fund established in the Treasury of the United States.

Dated: December 19, 2000.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 00-32780 Filed 12-26-00; 8:45 am]

BILLING CODE 4220-01-U

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1770

RIN 2550-AA13

#### Executive Compensation

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight ("OFHEO") solicits comments on this proposal to adopt a regulation to clarify the procedures OFHEO employs in overseeing compensation provided by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, "the Enterprises") to their executive officers. The proposed regulation would largely

formalize processes currently used by OFHEO in performing its executive compensation oversight responsibilities. The processes require the submission of relevant information by the Enterprises on a timely basis to enable OFHEO to efficiently carry out its executive compensation functions.

**DATES:** Written comments regarding the Notice of Proposed Rulemaking must be received on or before March 27, 2001.

**ADDRESSES:** Comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at <http://www.ofheo.gov>. OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5" disk. Alternatively, comments may be submitted via electronic mail to: [RegComments@ofheo.gov](mailto:RegComments@ofheo.gov).

**FOR FURTHER INFORMATION CONTACT:** Christine C. Dion, Associate General Counsel, telephone (202) 414-3838 (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. Statutory Framework

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" (the "Act"),<sup>1</sup> established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. Generally, OFHEO is the safety and soundness regulator of two of the nation's largest housing-related government sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises"). In addition to establishing OFHEO, the Act made amendments to the Enterprises' enabling statutes (collectively, the

"charter acts"),<sup>2</sup> in part to accommodate OFHEO's statutory supervisory powers.

Included in the supervisory responsibilities of the Director of OFHEO (the "Director") is oversight of compensation provided by the Enterprises to their respective executive officers. Briefly, the Director's statutory oversight of executive compensation involves two statutory mandates: (1) the prohibition of excessive compensation, as required by the Act; and (2) the prior review of termination benefits, as required by the charter acts. Notably, the differing statutes use similar but not identical terms in delineating the standards and identifying the different comparator groups to be used in these matters.

Specifically, the Act requires the Director to prohibit the Enterprises from providing compensation to any executive officer that is not reasonable and comparable with that paid by similar businesses to executives doing similar work. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies.<sup>3</sup>

The charter acts were amended by the Act to similarly provide that an Enterprise may only pay compensation that it determines is reasonable and comparable with compensation for employment in other similar businesses, and that the Enterprise must report annually to Congress on the comparability of the compensation policies for their employees with the compensation policies of other similar businesses.<sup>4</sup> The Enterprises have the general power to select the individuals who will work for them and to set their specific compensation. The Act explicitly provides that OFHEO may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises.<sup>5</sup>

To effectuate OFHEO's charge to prohibit excessive compensation, the Act empowers OFHEO to take such actions and perform such functions as the Director determines to be necessary.<sup>6</sup> OFHEO may also require an Enterprise to submit reports and special reports as deemed appropriate and in such form as the Director may require.<sup>7</sup> Moreover, OFHEO has express statutory

<sup>2</sup> Federal National Mortgage Association Charter Act (12 U.S.C. 1716-1723i) and Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451-1459).

<sup>3</sup> Section 1318(a) (12 U.S.C. 4518(a)).

<sup>4</sup> Section 309(d)(2) and (3) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(2) and (3)) and section 303(c) and (h) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(c) and (h)).

<sup>5</sup> Section 1318(b) (12 U.S.C. 4518(b)).

<sup>6</sup> Section 1313(8) (12 U.S.C. 4513(8)).

<sup>7</sup> Section 1314(a) (12 U.S.C. 4514(a)).

<sup>1</sup> 12 U.S.C. 4501 *et seq.*

# OFHEO

Director's Advisory

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## Policy Guidance

Issuance Date: December 19, 2000

Doc. #: PG-00-001

Subject: Minimum Safety and Soundness Requirements

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**To:** Chief Executive Officers of Fannie Mae and Freddie Mac  
All OFHEO Personnel

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### Background

The Federal Housing Enterprises Safety and Soundness Act of 1992, Title XIII of Pub. L. No. 102-550 (the Act) empowers OFHEO to take any such action as the Director determines to be appropriate to ensure that the federally sponsored housing enterprises,

Fannie Mae and Freddie Mac, are, among other things, adequately capitalized and operating safely, including by adopting supervisory policies and standards by regulation or other guidance or process. OFHEO herein sets forth the minimum supervisory requirements used by the agency in reviewing the ensuring, the adequacy of policies and procedures of the Enterprises in the areas of: (1) asset underwriting and credit quality; (2) balance sheet growth; (3) market risks; (4) information technology; (5) internal controls; (6) audits; (7) information reporting and documentation; and (8) board and management responsibilities and functions. If the agency finds that an Enterprise fails to meet any requirement or standard set forth in this pronouncement, the Director may, among other things, require the Enterprise to submit to the agency and implement an adequate plan to achieve timely compliance with the requirement or standard. If the Enterprise fails to submit such an adequate plan within the time specified by the agency or fails in any material respect to implement the plan, the agency may take additional supervisory action. The Director may at any time prescribe such supervisory actions as deemed appropriate to correct conditions resulting from an unsafe or unsound practice or condition or deficiency in complying with regulatory requirements or standards including, but not limited to, issuance of a notice of charges or order, imposition of civil money penalties, or other remedial actions or sanctions as determined by the Director.

The minimum supervisory requirements and standards identify key safety and soundness concerns regarding operation and management of an Enterprise, and ensure that action is taken to avoid the emergence of problems that might entail serious risks to an Enterprise. The minimum supervisory requirements of the Policy Guidance also reflect the need for internal policies and procedures in particular areas that, if not appropriately addressed by the Enterprises, may warrant action by OFHEO in order to reduce risks of loss and possible capital impairment. The proposed minimum requirements set forth herein are intended to effect these purposes without dictating how the Enterprises must be operated and managed; moreover, the Policy Guidance does not set out detailed operational and managerial procedures that an Enterprise must have in place. The Policy Guidance is intended to identify the ends that proper operational and management policies and procedures are to achieve, while leaving the means to be devised by each Enterprise as it designs and implements its own policies and procedures. Where OFHEO does specify particular requirements, each Enterprise's management is left with substantial flexibility to fashion and implement them.

The Policy Guidance is not intended to effect a change in OFHEO's policies; the announced minimum requirements reflect the basic underlying criteria OFHEO uses to assess the operations and managerial quality of an Enterprise. OFHEO will determine compliance with the requirements and related standards through examinations of the Enterprises, as well as off-site surveillance means and other interchanges with each Enterprise.

OFHEO routinely undertakes to evaluate an Enterprise's overall policies, in order to determine whether such policies are safe and sound in principle and in practice. OFHEO also evaluates whether procedures are in place to ensure that

an Enterprise's overall policies as adopted by the Enterprise's board of directors and management are, in fact, applied in the normal course of business. As reflected in the Policy Guidance, the Enterprises are, at a minimum, expected to adopt appropriate policies and internal guidelines, and to put in place procedures to ensure they are followed as a matter of routine.

Nothing in the Policy Guidance in any way limits the authority of OFHEO to otherwise address unsafe or unsound conditions or practices, or violations of applicable law, regulation or supervisory order. Action referencing the Policy Guidance may be taken separate from, in conjunction with or in addition to any other enforcement action available to OFHEO. Compliance with the Policy Guidance in general would not preclude a finding by the agency that an Enterprise is otherwise engaged in a specific unsafe or unsound practice or is in an unsafe or unsound condition, or requiring corrective or remedial action with regard to such practice or condition. That is, supervisory action is not precluded against an Enterprise that has not been cited for a deficiency under the Policy Guidance. Conversely, an Enterprise's failure to comply with one of the supervisory requirements set forth in the Policy Guidance may not warrant a formal supervisory response from OFHEO, if the agency determines the matter may be otherwise addressed in a satisfactory manner. For example, OFHEO may require timely submission of a plan to achieve compliance with the particular requirement or standard without taking any other enforcement action.

## **Subpart A — Introduction**

### (1) Authority, purpose, and scope.

(a) Authority. This Policy Guidance is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313(a), 1313(b)(1), 1313(b)(5) and 1371 of the Federal Housing Enterprise Safety and Soundness Act (Act) (12 U.S.C. 4513(a), 4513(b)(1), 4513(b)(5) and 4631). These provisions of the Act authorize OFHEO to take any action deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises) are operated in a safe and sound manner, including by adopting supervisory policies and standards by regulation, guidance, or other process.

(b) Purpose and scope. This Policy Guidance sets out certain minimum safety and soundness requirements for the business and operations of the Enterprises, and reiterates agency policies requiring the Enterprises to establish and implement policies and procedures that are sufficient to effectuate compliance with supervisory standards. If OFHEO determines that an Enterprise does not meet the requirements set forth herein, the Director may require the Enterprise to submit and carry out a plan to achieve compliance, or may take other corrective and remedial actions. The requirements enumerated herein are supervisory minimums. In order to satisfy an Enterprise's overarching obligation under the Act to conduct its operations in a safe and sound manner, it may be necessary and appropriate for an Enterprise to take additional

measures in these or other areas, as directed by OFHEO through regulation, guidance, order or otherwise as part of the supervisory process.

(2) Preservation of existing authority.

Neither this Policy Guidance nor any action by OFHEO to enforce compliance of an Enterprise therewith in any way limits the authority of the Director otherwise to address unsafe or unsound conditions or practices, or other violations of law or other regulation. Action under this Policy Guidance may be taken separate from, in conjunction with, or in addition to any other enforcement action deemed appropriate by OFHEO. Nothing in this Policy Guidance or related guidances limits the authority of the Director pursuant to section 1313 of the Act (12 U.S.C. 4513) or any other provision of law, rule or regulation applicable to the Enterprises.

(3) Definitions.

For purposes of this Policy Guidance, except as modified therein or unless the context otherwise requires, the terms used have the same meaning as set forth in section 1303 of the Act (12 U.S.C. 4502).

**Subpart B — Operational and Managerial Requirements**

(4) Asset underwriting and credit quality.

An Enterprise should establish and implement policies and procedures to adequately assess credit risks before they are assumed, and monitor such risks subsequently to ensure that they conform to the Enterprise's credit risk standards on an individual and an aggregate basis. The Enterprise should:

(a) For loans purchased and loans collateralizing securities guaranteed by the Enterprise, adopt and implement prudent underwriting standards and procedures commensurate with the type of loan or loans and the markets in which the loan or loans were made that include consideration of the borrower's and any guarantor's financial condition and ability to repay as well as the type and value of any collateral or credit enhancement;

(b) To the extent the Enterprise's assets are serviced or administered by other entities or are covered by mortgage insurance or other credit enhancements or arrangements, the Enterprise's policies and procedures should recognize the consequences and implications of such contractual arrangements for the Enterprise's credit risk;

(c) Establish and implement policies and procedures to address declining credit quality and to require appropriate corrective action; to establish sufficient reserves; and to deal with defaulted assets so as to minimize losses;

(d) Establish and implement policies and procedures to select and price credit risk to ensure that the Enterprise is appropriately compensated commensurate with the credit risk it assumes and its statutory obligations;

(e) Establish and implement policies and procedures that address the prudential selection, management and handling of counterparty credit exposure that arises from engaging in hedging activities and the use derivative instruments; and

(f) Establish and implement policies and procedures to identify, monitor and evaluate its credit exposures on an aggregate basis so as to assess the implications and consequences of matters such as concentration exposure (including geographic as well as product concentrations), to identify and evaluate credit risk trends effectively, and to maintain and revise appropriately its systems and procedures for underwriting, servicing, and monitoring of such exposures and changes to those exposures.

(5) Balance sheet growth and management.

An Enterprise's balance sheet growth should be prudent and consider:

(a) The source, volatility, and use of funds that support balance sheet growth;

(b) Any changes in credit risk or interest rate risk resulting from balance sheet growth;

(c) The effect of balance sheet growth on the Enterprise's capital adequacy; and

(d) The appropriate policies and procedures needed to manage changes in risk that may occur as a result of balance sheet growth.

(6) Market risk.

An Enterprise should establish and implement policies and procedures that allow for the effective identification, measurement, monitoring, and management of market risk. The Enterprise should:

(a) Establish and implement policies and procedures sufficient to quantify and monitor the interest rate risk of the Enterprise effectively and to model the effect of differing interest rate scenarios on the Enterprise's financial condition and operations;

(b) Develop risk management strategies that respond appropriately to changes in interest rates;

(c) Establish and implement policies and procedures sufficient to quantify and monitor the Enterprise's liquidity effectively, and to identify and anticipate various market environments and their effects on the Enterprises' liquidity; and

(d) Establish and maintain an effective contingency plan for liquidity under varying scenarios.

(7) Information technology.

An Enterprise should establish and implement policies and procedures to ensure that its computing resources, proprietary and nonpublic information and data are:

(a) Protected from access by unauthorized users, and otherwise protected by appropriate security measures;

(b) Reliable, accurate and available at all times as needed for its business operations, including an ability to effect timely recovery and resume operations after a reasonably foreseeable adverse event; and

(c) Designed to ensure adequate support of business operations.

(8) Internal controls.

An Enterprise should maintain and implement internal controls appropriate to the nature, scope and risk of its business activities that, at a minimum, provide for:

(a) An organizational structure and assignment of responsibility for management, employees, consultants and contractors, that provide for accountability and controls, including adherence to policies and procedures;

(b) A control framework commensurate with the Enterprise's risks;

(c) Policies and procedures adequate to safeguard and to manage assets; and

(d) Compliance with applicable laws, regulations and policies.

(9) Audits.

An Enterprise should establish and implement internal and external audit programs appropriate to the nature and scope of its business activities that, at minimum, provide for:

(a) Adequate monitoring of internal controls through an audit function appropriate to the Enterprise's size, structure and scope of operations;

(b) Independence of the audit function;

(c) Qualified professionals and management for the conduct and review of audit functions;

(d) Adequate testing and review of audited areas together with adequate documentation of findings and of any recommendations and corrective actions; and

(e) Verification and review of measures and actions undertaken to address identified material weaknesses.

(10) Information reporting and documentation.

An Enterprise should establish and implement policies and procedures for generating and retaining reports and documents that:

(a) Enable the Enterprise's board of directors (including appropriate committees) to make informed decisions and to exercise its oversight function, by providing all such relevant information of an appropriate level of detail as necessary;

(b) Enable the Enterprise's managers to make informed business decisions and to assess risks for all aspects of the Enterprise's business on an ongoing basis, by providing sufficient relevant information of an appropriate level of detail as necessary;

(c) Ensure decision-makers have appropriate and necessary information about particular transactions and business operations;

(d) Enable the Enterprise to administer and supervise all assets, liabilities, commitments and other financial obligations appropriately;

(e) Enable the Enterprise to enforce legal claims against borrowers, counterparties and other obligors; and

(f) Ensure timely and complete submissions of reports of financial condition and operations, as well as annual and other periodic reports and special reports to OFHEO whenever requested or required by OFHEO.

(11) Board and management responsibilities and function.

An Enterprise's board of directors shall ensure that the board (including appropriate committees) works with executive management to establish the Enterprise's strategies and goals in an informed manner, and that the Enterprise's executive managers and other managers, as appropriate, implement such strategies, by ensuring at a minimum that:

(a) The board (including appropriate committees) oversees the development of the Enterprise's strategies in key areas and exercises oversight necessary to ensure that management sets policies and controls to implement such strategies effectively;

(b) The board (including appropriate committees) hires qualified executive management, and exercises oversight to hold management accountable for meeting the Enterprise's goals and objectives;

(c) The board (including appropriate committees) is provided with accurate information about the operations and financial condition of the Enterprise in a timely



fashion, and sufficient to enable the board to effect its oversight duties and responsibilities;

(d) Management of the Enterprise sets policies and controls to ensure the Enterprise's strategies are implemented effectively, and that the Enterprise's organization structure and assignment of responsibilities provide clear accountability and controls; and

(e) Management of the Enterprise establishes and maintains an effective risk management framework, including review of such framework to monitor its effectiveness and taking appropriate action to correct any weaknesses.

(12) Format of policies and procedures.

(a) Generally, the policies of an Enterprise contemplated by this Policy Guidance should be in writing and in such form and detail as appropriate in light of their intended purpose, nature, and potential consequences for the operations and financial condition of the Enterprise, and approved by the board of directors (including appropriate committees) or such responsible officer or officers as designated by the board.

(b) The policies and procedures of an Enterprise contemplated by this Policy Guidance should be provided to OFHEO at such time and in such format as OFHEO directs.

**Subpart C — Compliance Plans**

(13) Notice; submission and review of compliance plans.

(a) Determination. The Director of OFHEO may, based upon a report of examination, or other supervisory information however acquired, determine that an Enterprise has failed or is likely to fail to satisfy the minimum supervisory requirements or standards set forth in Subpart B.

(b) Request for compliance plan. If the Director determines pursuant to paragraph (a) of this section that an Enterprise has failed or is likely to fail to satisfy a supervisory requirement or standard, OFHEO may require the submission of a written compliance plan.

(c) Schedule for filing compliance plan. An Enterprise may be required to file a written compliance plan with OFHEO within thirty days of receiving a written request for a compliance plan pursuant to paragraph (b) of this section.

(d) Contents of plan. A required compliance plan should include, subject to additional direction by OFHEO, a detailed description of the steps the Enterprise will take to correct a deficiency and any condition resulting therefrom and the time within which such steps will be undertaken and fully implemented.

(e) Review of compliance plans. If the compliance plan submitted under this section is deemed to be inadequate or incomplete, OFHEO may provide written notice of such inadequacy or deficiencies thereof to the Enterprise OFHEO or seek additional information from the Enterprise regarding the plan.

(f) Amendment of compliance plan. An Enterprise that has filed a required compliance plan to which no objection has been raised by OFHEO may, after prior written notice to and approval by the Director, amend the plan to reflect changes in circumstance, policies and procedures.

(14) Failure to submit acceptable plan or to comply with plan.

If an Enterprise does not submit an adequate and complete plan as required by the agency within the time specified by OFHEO or does not implement such an adequate and complete plan, the Director may require the Enterprise to correct any deficiency and may require additional corrective or remedial actions by the Enterprise as deemed to be appropriate pursuant to the Act, including sections 1371 (12 U.S.C. 4631), 1372 (12 U.S.C. 4632), and 1376 (12 U.S.C. 4636).

Dated: \_\_\_\_\_

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Armando Falcon, Jr.  
Director,  
Office of Federal Housing Enterprise Oversight

# OFHEO

Director's Advisory

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## Policy Guidance

Issuance Date: December 19, 2000

Doc. #: PG-00-002

Subject: Non-mortgage Liquidity Investments

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**To:** Chief Executive Officers of Fannie Mae and Freddie Mac and All  
OFHEO Personnel

### **Purpose:**

Fannie Mae and Freddie Mac (the Enterprises) were chartered by Congress as government-sponsored enterprises with public missions. They perform an important role in the United States mortgage market by gathering funds and purchasing mortgages from mortgage originators and guaranteeing mortgage-backed securities. In chartering the Enterprises, Congress charged the Enterprises with: (1) providing stability to mortgage markets; (2) responding to the changing capital markets; (3) assisting the secondary markets including the support of these markets for affordable housing; and (4) promoting access to credit throughout the country by increasing liquidity and improving distribution of investment capital for residential mortgage finance. These functions require the Enterprises, as principals in the secondary mortgage market, to serve as bedrock in providing liquidity to the U.S. housing finance system.

For the Enterprises effectively to perform their public purposes, they must be financially sound and liquid. As the Enterprises' financial safety and soundness regulator, OFHEO conducts its regulatory programs to ensure these companies adhere to safety and soundness standards. In addition, OFHEO interprets this to include heightening the positive effect of market discipline on the Enterprises by encouraging quality disclosures, appropriate accounting standards, and state-of-the-art risk management further strengthens their safety and soundness. More specifically, OFHEO conducts comprehensive safety and soundness examinations and requires the Enterprises to adhere to regulatory capital requirements. In conducting its regulatory programs, OFHEO applies a series of safety and soundness standards to assess the Enterprises' liquidity management, including their investments in non-mortgage liquidity assets. It is appropriate to issue initial guidance that addresses the safety and soundness standards OFHEO uses to evaluate Enterprise investment activities in non-mortgage liquidity assets.

Further, it should be noted that the Secretary of HUD, who has general regulatory power over the Enterprises and who is required to make such rules and regulations as necessary

to ensure that the purposes of the GSE's respective Charter Acts are accomplished, has issued an Advanced Notice of Proposed Rulemaking on possible substantive and/or procedural rules governing the GSEs' non-mortgage investment activities. Accordingly, the GSEs may be subject to regulations in this area through future HUD actions, in addition to this initial guidance.

### **Activities Covered:**

The Enterprises must maintain sufficient liquidity to meet both known and unexpected payment demands on borrowings and mortgage securities, for operations and to purchase mortgage assets. Liquidity management is the process by which the Enterprises manage the use and availability of various funding sources to meet current and future needs. Liquidity must be closely managed on a daily basis.

The Enterprises manage liquidity through three primary channels: securitizations, issuance of debt and conversion of liquid assets into cash. It is through careful management within and among the three channels, that the Enterprises can effectively meet demands and remain safe and sound under all market conditions. This Guidance specifically addresses "non-mortgage liquidity investments" which are conducted within the liquidity channel whereby the Enterprises are able to convert their own assets into cash.

There are various types of investments that may be appropriate for non-mortgage liquidity holdings. Appropriate non-mortgage liquidity investments are characterized by both creditworthiness and low price volatility. Even though an investment may be creditworthy, if the holding is subject to undue price volatility (e.g. common stock), the investment is inappropriate for inclusion in the non-mortgage liquidity portfolio since the investment may not be readily converted into cash without substantial loss.

For the purposes of this Guidance, the types of assets listed below are generally considered to be appropriate non-mortgage liquidity investments. This list is subject to revision over time as new asset types are introduced and/or market activities change. The presence of an asset on the list does not mean that OFHEO will necessarily consider any and all Enterprise investments in these assets to be safe and sound, especially if they fail to meet appropriate credit quality, maturity and diversification objectives:

- Debt issued by the United States Treasury,
- Debt issued by U.S. Government Agencies,
- General obligation debt issued by states and municipal authorities,
- Revenue obligations issued by states and municipal authorities,
- Corporate debt instruments,
- Money market instruments,
- Non-mortgage asset-backed securities, and
- Reverse repurchase agreements.

This Guidance does not address investments in mortgage-backed securities, mortgage revenue bonds, or other investments secured by housing (including commercial mortgage-backed securities with a significant housing component) since these assets are not principally held for liquidity purposes. Also, upon implementation of FAS 133, this Guidance is not intended to address the use of derivative instruments. For activities not covered in this Guidance on non-mortgage liquidity investments, there should be no inferences drawn about OFHEO's views.

### **Standards for Non-mortgage Liquidity Investment Activities:**

To ensure there are sufficient funds available to the mortgage market, the Enterprise must actively manage liquidity across all three channels. OFHEO assesses the safety and soundness of non-mortgage liquidity investment activities against five criteria. The five criteria are:

1. prudent investment policies and procedures that guide the Enterprise's process;
2. quality management information that ensures timely performance measures and governance data;
3. safe & sound investment holdings and investment culture;
4. quality controls and personnel administering and governing the process; and
5. independent testing of the process to assure compliance.

Details about each of the criteria are set out below.

#### *(1) Prudent investment policies and procedures that guide the Enterprise's process:*

The Enterprise must have a comprehensive written investment policy that clearly expresses the goals for the non-mortgage liquidity investment activities. The Board of Directors and management must evaluate the effectiveness of non-mortgage liquidity investments in meeting the goals set out in the policy; and management must evaluate activities against the procedures and limitations in the policy. At a minimum, the policy should cover:

- the purpose of the non-mortgage liquidity investment holdings;
- the institutional goal(s) for the non-mortgage liquidity investment holdings;
- the authorized instruments and activities;
- the internal control standards;
- the limits structure;
- the performance standards and measures; and
- the reporting requirements.

The policy should clearly document the purpose for non-mortgage liquidity investment holdings. Management should install a series of procedures and controls that produce behaviors and performance that are consistent with the defined purpose for the non-mortgage liquidity investment activities.

The policy should establish the primary goals for the non-mortgage liquidity investment activities. For an Enterprise, some primary goals should be to augment liquidity and to generate a rate of return that is reasonable in light of the purpose of such investments. The emphasis placed on individual goals may vary based upon institutional differences. However, non-mortgage liquidity investments made with a goal of maximizing earnings or maximizing arbitrage opportunities would be inconsistent with this Guidance for the maintenance of an Enterprise's liquidity portfolio.

The policy should clearly define the authorized investment vehicles and establish guidelines for the introduction of new types of investment vehicles.

The Enterprise's procedures should include a framework of controls that provide an appropriate separation of duties and responsibilities. There should be responsibility assigned for an independent review of non-mortgage liquidity investments by a designated unit, such as audit or an independent risk oversight group.

The Enterprise should adopt a limit structure to promote diversification in the non-mortgage liquidity investment portfolio and emphasizes strategies for risk mitigation. Additionally, there should be limits for the aggregate size of the non-mortgage liquidity investment portfolio.

The Enterprise should adopt measures to evaluate performance against the policy and its objectives.

The Enterprise should adopt internal reporting requirements that quantify performance, document exceptions, and serve as a basis for communicating information about activities involving non-mortgage liquidity assets.

The Enterprise should periodically evaluate the adequacy and content of its public disclosure for non-mortgage investment liquidity activities.

(2) Quality management information that ensures timely performance measures and governance data:

The Enterprise must maintain systems that adequately identify, measure and report the nature and level of exposure associated with their non-mortgage liquidity investments. Management must remain appropriately informed about the activity in non-mortgage liquidity investments. Also, the Board of Directors should periodically be provided a summary of non-mortgage liquidity investment activities. At a minimum, management's reports to the Board should:

- summarize non-mortgage investment activity since the last report;
- identify and explain any material changes or trends in the non-mortgage liquidity investment portfolio risk and returns; and
- report and explain exceptions to the policy or risk guidelines for liquidity investments.

Meaningful changes in portfolio volume and spreads from period to period should be identified and explained to the Board in terms of why they occurred (e.g., changes in portfolio composition, changes in funding costs, etc.). In overseeing the day-to-day management of non-mortgage liquidity investment activities, management should consider the discrete risks associated with the non-mortgage liquidity investment portfolio as well as the exposure of this portfolio within the context of risks across the entire Enterprise. This includes assessing the non-mortgage liquidity investment portfolio's sensitivity to changes in interest rates, expressed in terms of net interest income sensitivity and portfolio value sensitivity.

(3) Safe & sound investment holdings:

The Enterprise should implement and enforce policies and/or procedures for non-mortgage liquidity investments. Management should establish limits and procedures in a manner that is consistent with the Board's sanctioned goals and risk appetite. Certain risk-limits for non-mortgage liquidity investments may be expressed in terms of how they affect the Enterprise's overall risk-profile, such as those pertaining to interest-rate sensitivity. Other risk limits may be more appropriately expressed in terms of individual portfolios and instruments. In addition, limits restricting the size-range and scope of the non-mortgage liquidity investment activities should be established.

The limits and procedures should delineate the acceptable investment instruments, acceptable markets, acceptable counterparties, along with unacceptable investment or portfolio activities. The Enterprise should maintain sufficient documentation to demonstrate due diligence in adhering to policies, procedures, limits and guidelines.

At a minimum, limits should be established and reviewed annually, for:

**Credit threshold guidelines:** Credit quality is a compelling factor for liquidity investments. Since liquidity investments should be able to be readily converted into cash without substantial exposure to losses, investments should be insulated from price vulnerabilities that are associated with creditworthiness. The most effective means of insulating against price exposure from credit quality concerns is to invest in high-quality instruments and the debt obligations of high-quality issuers. The Enterprise should establish thresholds identifying the minimum credit standards of any security eligible for purchase. Where these standards involve credit ratings, the ratings should come from a nationally recognized rating organization. Procedures should be included that determine the steps to be taken by management if an instrument's credit rating falls below the minimum threshold before maturity.

**Maturity guidelines:** Because the maturity of an investment significantly affects its exposure to credit risk and price volatility, longer maturity instruments have limited suitability as liquidity investments. The Enterprise should establish the maximum maturity allowable for non-mortgage liquidity investments. It would be appropriate to have different maturity limits for certain types of instruments. For example, management may wish to establish shorter maturity limits for fixed-

coupon instruments than for adjustable-rate securities. Management may have different maturity limits for bullet securities and amortizing structures. It would be appropriate to establish a maturity matrix based upon an instrument's credit rating at the time of purchase.

**Diversification and concentration guidelines:** Credit concentrations can increase credit risk. Accordingly, the Enterprise should establish guidelines that limit investments in the securities of any single issuer. Such limits may be established as a percentage limit (e.g., as a percentage of capital) or as an absolute dollar amount. To enhance portfolio liquidity, there should also be a limit on the percentage of any particular issue held by the Enterprise.

(4) Quality controls and personnel administering and governing the process:

The Enterprise should maintain a comprehensive set of controls to enforce the appropriate separation of duties and responsibilities. These controls should translate into clear procedures for routine operations. At a minimum, the internal control program for non-mortgage liquidity investment activities should include procedures for the following: portfolio valuation, personnel, settlement, physical control and documentation, conflict of interest, and accounting.

**Portfolio valuation** procedures should require pricing that is independent of the investment portfolio managers. Pricing securities provides an indication of the market depth and liquidity for individual instruments, and is an important process for providing data to the risk management function, particularly within a framework of estimating market value sensitivity. Pricing is particularly important for securities that are classified as "available-for-sale" for accounting purposes.

**Personnel guidelines** should require competent and experienced staff be responsible for conducting transactions and managing the non-mortgage investment portfolio. There should be clear guidance regarding the roles and responsibilities of individuals involved with the non-mortgage liquidity portfolio.

Procedures should cover standard **settlement practices** for the various types of non-mortgage liquidity investments in the Enterprise's portfolio. Inadequate understanding of standard settlement practices, coupled with poor internal controls, could result in unnecessary costs or losses.

Procedures covering **control and documentation** should be comprehensive and consistent with the evolving better practices in the marketplace. The procedures should include, for example, standards for: processing and controlling purchased instruments, safeguarding investment documentation and reviewing trade tickets and confirmations.

**Conflict of interest** guidelines should govern all Enterprise personnel authorized to purchase or sell non-mortgage liquidity investments. These guidelines should



ensure that all directors, officers and employees act in the Enterprise's best interest. Conflict of interest guidelines should address employee relationships with authorized broker/dealers. Guidelines should also address personnel accepting gifts and travel expenses from broker/dealers.

**Accounting** practices should be evaluated to determine the level of compliance with GAAP standards.

(5) Independent testing and review of the process to assure compliance:

An independent review of non-mortgage liquidity investment activities should be conducted periodically to ensure:

- the accuracy and integrity of information provided to the Board, management and other oversight bodies;
- the adherence to policy, procedures, limits and guidelines;
- the timeliness, accuracy and usefulness of non-mortgage investment reports;
- the adequacy of personnel resources and capabilities; and
- the non-mortgage liquidity investment activities remain appropriate in the context of the marketplace and the external environment.

This review may be conducted by a risk oversight unit or internal audit department, or any party that is independent of the routine risk-taking decisions and should be commensurate with the level of review of other primary Enterprise activities. Independent review findings for non-mortgage liquidity investments should be reported to the Board directly or through one of its committees. The Board should consider the independent review when reaffirming policies, and should address any issues raised.

***Disclosure of Non-mortgage Liquidity Investment Activities:***

Sound risk management practices include thorough disclosures about the Enterprise's risks and further regulators' efforts to increase financial transparency for regulated financial companies. Quality disclosures about risks and risk management can be an effective deterrent to excessive risk-taking. Three essential elements needed to promote market discipline for non-mortgage liquidity investments are (1) type of issuer and security, (2) maturity, and (3) credit quality or rating. Accordingly, quality disclosure for a portfolio of non-mortgage liquidity investments should include a detailed categorization of the portfolio with respect to each of these elements and cross-categorization, so that (for example) the quantity of any longer-maturity, lower-credit-quality assets is clearly identified. Information about fair values; yields; and narrative discussions of objectives, risk management policies, and controls can also promote transparency of risk and should be included. Such disclosures should be made quarterly, and they should be made using average balances so that average risks can be assessed – not just the risks on a given date. Over the next few quarters, OFHEO will discuss more specifically with the Enterprise how these disclosures will meet the expectations expressed in this guidance. Attached is an example of a disclosure format that may be used by the Enterprise. However, the

Enterprise may disclose the risks in its non-mortgage liquidity investment activities, consistent with the expectations expressed in this guidance, using a format of its choice.

**Summary:**

This Guidance sets forth OFHEO’s process for evaluating the safety and soundness of liquidity non-mortgage investment activities. OFHEO remains committed to ensuring the Enterprises remain financially sound, have appropriate control environments, and engage only in financially sound business and investment activities. OFHEO’s examiners have been instructed to incorporate this evaluation process into their ongoing safety and soundness examinations. Examiners will evaluate and test the Enterprise’s non-mortgage liquidity investment processes and activities to ensure they are in compliance with this guidance.

Dated: \_\_\_\_\_

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Armando Falcon, Jr.  
Director  
Office of Federal Housing  
Enterprise Oversight

Attachment

**Amortized Cost, By Rating Category**

**Sample Disclosure Form**

	<b>AAA</b>	<b>AA</b>	<b>A</b>	<b>Below BBB</b>
<b>Non-Mortgage Investments</b>				
<i>Fed funds sold</i>				
<i>US Treasury securities</i>				
<i>US Agency securities</i>				
<i>Repurchase agreements</i>				
<i>Auction rate preferred stock</i>				
<i>Asset-backed securities</i>				
<i>Fixed-rate</i>				
<i>Adjustable-rate</i>				
<i>Commercial paper</i>				
<i>Corporate notes and bonds</i>				
<i>State and municipal obligations</i>				
<i>Other investments</i>				
<b>Total Non-Mortgage Investments</b>				

<b>Non-Mortgage Investments</b>				
<i>Due within one year</i>				
<i>Due after one year through five years</i>				
<i>Due after five years through ten years</i>				
<i>Due after ten years</i>				
 <i>Asset-backed securities (1)</i>				
<b>Total Non-Mortgage Investments</b>				

(1) Contractual maturities of asset-backed securities may not represent their expected lives as obligations underlying these securities may be prepaid at any time without penalty.

\*Or equivalent

**Sample Disclosure Form**

	<b>Amortized Cost</b>	<b>Fair Value</b>	<b>Yield</b>	<b>Wgtd Avg Maturity</b>
<b>Non-Mortgage Investments</b>				
<i>Fed funds sold</i>				
<i>US Treasury securities</i>				
<i>US Agency securities</i>				
<i>Repurchase agreements</i>				
<i>Auction rate preferred stock</i>				
<i>Asset-backed securities</i>				
<i>Fixed-rate</i>				
<i>Adjustable-rate</i>				
<i>Commercial paper</i>				
<i>Corporate notes and bonds</i>				
<i>State and municipal obligations</i>				
<i>Other investments</i>				
<b>Total Non-Mortgage Investments</b>				

<b>Non-Mortgage Investments</b>				
<i>Due within one year</i>				
<i>Due after one year through five years</i>				
<i>Due after five years through ten years</i>				
<i>Due after ten years</i>				
 <i>Asset-backed securities (1)</i>				
<b>Total Non-Mortgage Investments</b>				

(1) Contractual maturities of asset-backed securities may not represent their expected lives as obligations underlying these securities may be prepaid at any time without penalty.

rule, which reduced the term of future Shared Appreciation Agreements (SAA), lowered the interest rate on amortized SAA recapture, and deducted the value of certain capital improvements from the shared appreciation calculation. This document contains a correction to that rule.

**DATES:** Effective December 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Cumpton, telephone (202) 690-4014; electronic mail: mike\_cumpton@wdc.fsa.usda.gov.

**SUPPLEMENTARY INFORMATION:** The Farm Service Agency published a document amending part 1951 in the **Federal Register** on August 18, 2000, (65 FR 50401). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 00-20679, the Agency is correcting § 1951.914(c)(1)(A) to clarify that the increase in square footage that is being considered is "living area" square footage.

In rule FR Doc. 00-20679 published on August 18, 2000, make the following correction:

**PART 1951—[CORRECTED]**

**§ 1951.914 [Corrected]**

1. On page 50404, in the third column, in § 1951.914(c)(1)(iii)(A), the second sentence is removed and two new sentences are added in its place to read as follows:

**§ 1951.914 Servicing shared appreciation agreements.**

\* \* \* \* \*

- (c) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*

(A) \* \* \* If the new residence is affixed to the real estate security as a replacement for a home which existed on the security property when the Shared Appreciation Agreement was originally executed, or the living area square footage of the original dwelling was expanded, only the value added to the real property by the new or expanded portion of the original dwelling (if it added value) will be deducted from the current market value. Living area square footage will not include square footage of patios, porches, garages, and similar additions.

\* \* \* \* \*

Signed in Washington, DC, on December 18, 2000.

**August Schumacher, Jr.**

*Under Secretary for Farm and Foreign Agricultural Services.*

[FR Doc. 00-32712 Filed 12-22-00; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Chapter XVII**

**RIN 2550-AA14**

**Reorganization of the Office of Federal Housing Enterprise Oversight Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is reorganizing and renumbering its regulations. The effect is to achieve a more logical and efficient presentation of current regulations and to provide a framework for new regulations. In promulgating this reorganizational regulation, OFHEO finds that notice and public comment are not necessary. Accordingly, this final regulation is effective upon publication in the **Federal Register**.

**EFFECTIVE DATE:** This regulation is effective December 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** David W. Roderer, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G. Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414-6924 (not a toll free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** On July 27, 2000, the Office of Federal Housing Enterprise Oversight (OFHEO) published a notice of its intention to undertake a regulatory project to ensure the adoption and implementation of various written policies and procedures for the supervision of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. See 65 FR 46119 (July 27, 2000). This final regulation makes technical and organizational changes to the numbering of existing regulations so they will fit logically within a new framework of the regulatory project that will incorporate additional rulemaking. Section 553(b)(3)(A) of Title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the agency may publish regulations in final form and that a delayed effective date is unnecessary. 5 U.S.C. 553(d).

The final regulation adds three new subchapter headings, amends one subchapter heading, redesignates

existing parts and conforms internal cross-references therein. The following derivation table shows the origin of the material that is contained in each of the newly designated subchapters and parts.

**Subchapter A—OFHEO Organization and Functions**

New part	Subject matter	Old part
1700 .....	Organization and Functions.	1700
1702 .....	Privacy Act of 1974	1720
1703 .....	Release of Information.	1710
1704 .....	Debt Collection .....	1730
1705 .....	Equal Access to Justice Act Amendment.	1735

**Subchapter B—[Reserved]**

**Subchapter C—Safety and Soundness**

Part	Subject matter	Part
1750 .....	Capital .....	1750

**Subchapter D—Rules of Practice and Procedure**

Part	Subject matter	Part
1780 .....	Rules of Practice and Procedure.	1780

With the renumbering of OFHEO's regulations, the section reference and internal cross-references to old part and section numbers must also be changed. As such, each new part addresses amendatory cross-references in a table reflecting the new sections, the cross-sections to be deleted, and the new cross-sections to be added.

**Regulatory Impact**

This is a technical rule that reorganizes OFHEO's regulations without substantive change to the rule and will not impose any substantive regulatory requirements. It is not a significant regulatory action under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), or a "rule" under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, or the Small Business Regulatory Enforcement Act, 5 U.S.C. 804(3)(C). Consequently, no regulatory impact assessment is required, no regulatory flexibility analysis is required, and no report to Congress or GAO is required.

OFHEO has determined that there is good cause for issuing this rule without notice and public comment. Section 553(b)(3) of Title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the agency may publish regulations in final form. Additionally, OFHEO finds that there is

good cause for having this rule take effective immediately pursuant to 5 U.S.C. 553(d).

**List of Subjects in 12 CFR Parts 1700 Through 1790**

Organization and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, OFHEO is amending 12 CFR chapter XVII as follows:

1. Revise the heading of subchapter A to read "OFHEO Organization and Functions."

2. Redesignate part 1720 as new part 1702.

**PART 1702—IMPLEMENTATION OF THE PRIVACY ACT OF 1974**

3. The authority citation for new part 1702 continues to read as follows:

**Authority:** 5 U.S.C. 552a; 12 U.S.C. 4513(b).

4. Amend cross-references in new part 1702 as indicated in the table below. For each new designated section indicated in the left column, remove the cross-reference indicated in the middle column and, in its place, add the new cross-reference indicated in the right column:

New Section	Remove Cross-Reference	Add Cross-Reference
1702.1(a) .....	part 1720 (twice) .....	part 1702 (twice)
1702.2 .....	part 1720 .....	part 1702
1702.4(a) .....	§ 1720.3(b)(3) .....	§ 1702.3(b)(3)
1702.4(a)(2) .....	§ 1720.5 .....	§ 1702.5
1702.4(b)(1) .....	§ 1720.3(b)(3) .....	§ 1702.3(b)(3)
1702.4(d) .....	§ 1720.9 .....	§ 1702.9
1702.7(b) .....	§ 1720.6 .....	§ 1702.6
1702.8(b) .....	§ 1720.12(b) .....	§ 1702.12(b)
1702.8(c) .....	§ 1720.9 .....	§ 1702.9
1702.9(a) .....	§ 1720.3(b)(3) .....	§ 1702.3(b)(3)
1702.9(a) .....	§ 1720.7 .....	§ 1702.7
1702.10(b) .....	§ 1720.12(b) .....	§ 1702.12(b)
1702.10(d)(2) .....	§ 1720.12(b) .....	§ 1702.12(b)
1702.11(a)(4) .....	§ 1720.2 .....	§ 1702.2
1702.11(b) .....	§ 1720.6 .....	§ 1702.6
1702.12(a) .....	§ 1720.11 .....	§ 1702.11
1702.12(a) .....	§ 1720.11(a)(3) .....	§ 1702.11(a)(3)
1702.13(a) .....	§ 1720.12(a) .....	§ 1702.12(a)
1702.13(a) .....	§ 1720.6 .....	§ 1702.6
1702.13(b) .....	§ 1720.12 .....	§ 1702.12
1702.13(b) .....	§ 1720.11(a)(6)(v) .....	§ 1702.11(a)(6)(v)

5. Redesignate part 1710 as new part 1703 and revise the heading to read as follows:

**PART 1703—RELEASE OF INFORMATION**

6. The authority citation for new part 1703 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552; 12 U.S.C. 4513, 4522, 4639; E.O. 12600; 3 CFR, 1987 Comp., p. 235.

7. Amend cross-references in new part 1703 as indicated in the table below. For each new designated section indicated in the left column, remove the cross-reference indicated in the middle column and, in its place, add the new cross-reference indicated in the right column:

New Section	Remove Cross-Reference	Add Cross-Reference
1703.1 .....	§ 1710.2 .....	§ 1710.2
1703.1 .....	part 1710 .....	part 1703
1703.12(a)(1) .....	§ 1710.9 .....	§ 1703.9
1703.12(b) .....	§ 1710.11(b) .....	§ 1703.11(b)
1703.13(a) .....	§ 1710.17(a) .....	§ 1703.17(a)
1703.15(b)(2) .....	§ 1710.11(b) .....	§ 1703.11(b)
1703.15(b)(4) .....	§ 1710.16 .....	§ 1703.16
1703.16(b) .....	§ 1710.13 .....	§ 1703.13
1703.16(b) .....	§ 1710.17(b) .....	§ 1703.17(b)
1703.17(b) .....	§ 1710.16 .....	§ 1703.16
1703.18(b)(1) .....	§ 1710.11(b)(4) .....	§ 1703.11(b)(4)
1703.18(c) .....	§ 1710.11(b)(4) .....	§ 1703.11(b)(4)
1703.18(d)(2) .....	§ 1710.11(b)(4) .....	§ 1703.11(b)(4)
1703.18(e)(1) .....	§ 1710.11(b)(4) .....	§ 1703.11(b)(4)
1703.21(b) .....	§ 1710.22(b)(1)(i) .....	§ 1703.22(b)(1)(i)
1703.21(b) .....	§ 1710.22(b)(1)(ii) .....	§ 1703.22(b)(1)(ii)
1703.22(a) .....	§ 1710.23 .....	§ 1703.23
1703.23(a) .....	§ 1710.24 .....	§ 1703.24
1703.23(b) .....	§ 1710.22 .....	§ 1703.22
1703.23(e) .....	§ 1710.22 .....	§ 1703.22
1703.23(g) .....	§ 1710.22 .....	§ 1703.22
1703.24(a) .....	§ 1710.23 .....	§ 1703.23
1703.24(c)(5) .....	§ 1710.16 .....	§ 1703.16
1703.34(c) .....	§ 1710.33 .....	§ 1703.33
1703.38(a) .....	§ 1710.22(b)(1)(i) .....	§ 1703.22(b)(1)(i)

New Section	Remove Cross-Reference	Add Cross-Reference
1703.40(b) .....	§ 1710.33 .....	§ 1703.33
1703.40(b) .....	§ 1710.34 .....	§ 1703.34
1703.40(b) .....	§ 1710.37 .....	§ 1703.37

8. Redesignate part 1730 as new part 1704.

**Authority:** 5 U.S.C. 5514; 26 U.S.C. 6402(d); 31 U.S.C. 3701–3720A.

cross-reference indicated in the middle column and, in its place, add the new cross-reference indicated in the right column:

**PART 1704—DEBT COLLECTION**

9. The authority citation for new part 1704 continues to read as follows:

10. Amend cross-references in new part 1704 as indicated in the table below. For each new designated section indicated in the left column, remove the

New Section	Remove Cross-Reference	Add Cross-Reference
1704.1(a) .....	part 1730 .....	part 1704
1704.1(b)(1) .....	part 1730 .....	part 1704
1704.1(b)(2) .....	part 1730 .....	part 1704
1704.1(b)(3) .....	part 1730 .....	part 1704
1704.1(b)(4) .....	part 1730 (twice) .....	part 1704 (twice)
1704.2 .....	part 1730 (twice) .....	part 1704 (twice)
1704.2(c) .....	part 1730 .....	part 1704
1704.3(a) .....	part 1730 (twice) .....	part 1704 (twice)
1704.21(b)(9) .....	§ 1730.23 .....	§ 1704.23
1704.21(b)(12)(ii) .....	U.S.C. 3729–3731 .....	U.S.C. 3729–3731
1704.23(a)(4) .....	§ 1730.21(b) .....	§ 1704.21(b)
1704.29(a)(1)(ii) .....	§ 1730.21 .....	§ 1704.21
1704.29(a)(1)(iii) .....	§ 1730.23(b) .....	§ 1704.23(b)
1704.29(a)(1)(iv) .....	§ 1730.24(b) .....	§ 1704.24(b)
1704.29(a)(2) .....	§§ 1730.24–1730.26 .....	§§ 1704.24–1704.26
1704.29(a)(2)(iii) .....	§§ 1730.24–1730.26 .....	§§ 1704.24–1704.26
1704.32(a) .....	when— .....	when—
1704.41 .....	§ 1730.42 (three times) .....	§ 1704.42 (three times)
1704.42 .....	§ 1730.41 .....	§ 1704.41
1704.51(c) .....	§ 1730.53 .....	§ 1704.53

11. Redesignate part 1735 as new part 1705.

**PART 1705—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT**

12. The authority citation for new part 1705 continues to read as follows:

**Authority:** 5 U.S.C. 504(c)(1).

13. Amend cross-references in new part 1705 as indicated in the table below. For each new designated section indicated in the left column, remove the cross-reference indicated in the middle column and, in its place, add the new cross-reference indicated in the right column:

New Section	Remove Cross-Reference	Add Cross-Reference
1705.3(a) .....	§ 1735.4(a) .....	§ 1705.4(a)
1705.3(b)(1) .....	§ 1735.5(b) .....	§ 1705.5(b)
1705.5(a) .....	§ 1735.6 .....	§ 1705.6
1705.10(a) .....	§ 1735.4(a) .....	§ 1705.4(a)
1705.10(a) .....	§ 1735.4(b) .....	§ 1705.4(b)
1705.10(a)(3) .....	§ 1735.12 .....	§ 1705.12
1705.10(b) .....	§ 1735.4(a) .....	§ 1705.4(a)
1705.10(c) .....	§ 1735.4(b) .....	§ 1705.4(b)
1705.11(a) .....	§ 1735.10(c)(4)(i) .....	§ 1705.10(c)(4)(i)
1705.21(a) .....	§ 1735.25 .....	§ 1705.25
1705.22 .....	§ 1735.25 .....	§ 1705.25
1705.25 .....	§ 1735.27 .....	§ 1705.27
1705.26(a) .....	§ 1735.25 .....	§ 1705.25
1705.26(b) .....	§ 1735.27 .....	§ 1705.27
1705.26(d) .....	§ 1735.4(a) .....	§ 1705.4(a)
1705.26(e) .....	§ 1735.4(b) .....	§ 1705.4(b)
1705.27 .....	§ 1735.26 .....	§ 1705.26
1705.27 .....	§ 1735.25 .....	§ 1705.25

14. Add and reserve subchapter heading B after new part 1705 as follows:

**Subchapter B—[Reserved]**

15. Add subchapter heading C before part 1750 as follows:

**Subchapter C—Safety and Soundness**

16. Add subchapter heading D before part 1780 as follows:

**Subchapter D—Rules of Practice and Procedure**

Dated: December 19, 2000.

**Armando Falcon, Jr.**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 00–32779 Filed 12–22–00; 8:45 am]

BILLING CODE 4220–01–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 99–NM–326–AD; Amendment 39–12046; AD 2000–25–11]

RIN 2120–AA64

**Airworthiness Directives; Boeing Model 747–400 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires repetitive inspections to detect fatigue cracking of the longeron splice fittings at stringer 11 on the left and right sides at body station 2598, and various follow-on actions. The actions specified by this AD are necessary to detect and correct fatigue cracking of the longeron splice fittings and subsequent damage to adjacent structure. Such damage could result in the inability of the structure to carry horizontal stabilizer flight loads, and consequent reduced controllability of the horizontal stabilizer. This action is intended to address the identified unsafe condition.

**DATES:** Effective January 30, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This

information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the **Federal Register** on June 28, 2000 (65 FR 39828). That action proposed to require repetitive inspections to detect fatigue cracking of the longeron splice fittings at stringer 11 on the left and right sides at body station 2598, and various follow-on actions.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Support for the Proposed Rule**

One commenter supports the proposed rule.

**Request to Reference New Service Bulletin**

One commenter requests that the FAA revise the proposed rule to reference a new service bulletin, Boeing Alert Service Bulletin 747–53A2419, Revision 1, dated September 21, 2000. (The proposed rule referenced Boeing Alert Service Bulletin 747–53A2419, dated December 17, 1998, as the appropriate source of service information for certain proposed actions.) The commenter provides no justification for its request.

The FAA concurs with the commenter's request. Since the issuance of the proposed rule, the FAA has reviewed and approved Revision 1 of the service bulletin, including Appendix A. Revision 1 clarifies certain instructions and revises the effectivity listing to show changes in airplane operators. (No additional airplanes are added to the effectivity listing of Revision 1.) Therefore, the FAA has revised the applicability statement and paragraphs (a), (b)(1), (b)(2), and (c) of this final rule to reference Revision 1 of the service bulletin as the appropriate source of service information for the

actions required by those paragraphs. The FAA also has added a new Note 2 to this AD (and reordered subsequent notes accordingly) to state that accomplishment of the actions required by this AD in accordance with the original issue of the service bulletin is acceptable for compliance with this AD.

**Request To Follow Service Bulletin Instructions**

One commenter requests that the FAA revise the proposed AD to reflect the service bulletin instructions for removal and replacement of the longeron splice fittings. The commenter notes that the service bulletin allows for removal and replacement of only those splice fittings that are cracked, provided that repetitive inspections of the remaining, uncracked, fittings continue. The proposed AD would require removal and replacement of all four fittings on the affected side if a single fitting is found to be cracked.

The FAA does not concur with the commenter's request. As explained in the "Differences Between Proposed Rule and Alert Service Bulletin" section of the proposal, the FAA finds it appropriate to mandate replacement of all longeron splice fittings on the affected side of the airplane if one fitting is found to be cracked. As pointed out in that same section of the proposal, the service bulletin recommends replacement of all four fittings on one side of the airplane at the same time (see Flag Note 1 of Figure 1 of the service bulletin). No change to the final rule is necessary in this regard.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 490 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours (1 hour per each side) per airplane to accomplish the required inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be \$7,080, or \$120 per airplane, per inspection cycle.