

Proposed Rules

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

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]

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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.

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"),¹ 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"),² 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.³

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.⁴ 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.⁵

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.⁶ OFHEO may also require an Enterprise to submit reports and special reports as deemed appropriate and in such form as the Director may require.⁷ Moreover, OFHEO has express statutory

² 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).

³ Section 1318(a) (12 U.S.C. 4518(a)).

⁴ 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)).

⁵ Section 1318(b) (12 U.S.C. 4518(b)).

⁶ Section 1313(8) (12 U.S.C. 4513(8)).

⁷ Section 1314(a) (12 U.S.C. 4514(a)).

¹ 12 U.S.C. 4501 *et seq.*