

Proposed Rules

Federal Register

Vol. 68, No. 15

Thursday, January 23, 2003

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 1730

RIN 2550-AA25

Public Disclosure of Financial and Other Information

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed regulation.

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

DATES: Written comments on the proposed regulation must be received by March 24, 2003.

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

SUPPLEMENTARY INFORMATION:

I. Comments

The Office of Federal Housing Enterprise Oversight (OFHEO) invites comments on all aspects of the proposed regulation, including legal and policy considerations, and will take all comments into consideration before issuing the final regulation. 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, or on the OFHEO Web site at <http://www.ofheo.gov>.

II. Background

A. Introduction

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

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

As users of and participants in the financial markets, the success of the Enterprises in meeting their public policy missions and in maintaining their safe and sound operations is inextricably tied to full and robust disclosure.¹ Disclosure may provide

information about the corporate operations of a firm, the intricacies of a given securities offering, or specialized information concerning particular events or business practices. In addition, Enterprise securities have become increasingly significant to domestic and foreign market participants. The business practices of the Enterprises affect large and small investors, debt markets and international debt holders alike. Access to the markets and the price of that access are directly affected by investor perceptions of the transparency of the Enterprises and the safety and soundness of their operations. In such an environment, as the Enterprises themselves acknowledge, they have an interest in providing "best in class" disclosures.²

B. Disclosure and Safe and Sound Operations

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

While the offer and sale of their securities are exempt from the registration requirements of the Securities Act of 1933⁶ and their securities are exempted securities under the Securities Exchange Act of 1934 (Exchange Act),⁷ the Enterprises last July indicated that they would voluntarily register their common stock

20000), available at <http://www.freddie.com/>; and Franklin Raines, FDIC Panel: "The Rise of Risk Management: Challenges for Policy Makers," 1, 6 Media, Speeches (July 31, 2002), available at <http://www.fanniemae.com/>.

² *Id.* See, for example, Fannie Mae, Franklin Raines, FDIC Panel.

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

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

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

⁶ 15 U.S.C. 77a through 77aa.

⁷ 15 U.S.C. 78a through 78jj.

¹ See, Freddie Mac and Fannie Mae Enhancements to Capital Strength, Disclosure and Market Discipline, 3-4 News, Archives (October 19,

with the Securities and Exchange Commission (SEC) under the provisions of section 12(g) of the Exchange Act, 15 U.S.C. 78l(g). That section permits companies not covered by the Exchange Act and its requirements for periodic disclosures to submit voluntarily to SEC rules. Voluntary registration triggers the attendant rules and regulations of the SEC, including SEC enforcement authorities. Once a company volunteers, it must remain under the strictures of the law, unless permitted to remove itself by the SEC. OFHEO is proposing this regulation, in part, to facilitate the process of voluntary registration by the Enterprises under the Exchange Act.

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

III. Section-by-Section Analysis

Section 1730.1 Purpose

This part would require the Enterprises to prepare and submit financial and other disclosures as specified by OFHEO. The required disclosures are intended to complement the supervisory efforts of OFHEO to ensure the capital strength of the Enterprises and to promote safe and sound operations within each Enterprise and the mortgage-finance system.

This section also would note that this regulation does not limit or restrict the authority of OFHEO to act under its safety and soundness mandate to regulate the Enterprises, including conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations.

Section 1730.2 Definitions

This section would set forth definitions relevant to the proposed regulation.

Section 1730.3 Periodic Disclosures

This section would require each Enterprise to prepare disclosures relating to its financial condition, results of operation, business developments and management expectations that include supporting

financial information and certification thereof.

An Enterprise would satisfy the proposed requirement for periodic disclosures required in the section if:

1. In the case of an Enterprise having a class of securities registered pursuant to section 12 of the Exchange Act, the Enterprise prepares an annual report, quarterly report, and current reports, and such other materials that may be required under the rules and regulations of the Commission, including interpretations by the Commission and its staff and rules governing audited financial statements;

2. The Enterprise files with the Commission all reports, statements and forms required pursuant to section 14(a) and (c) of the Exchange Act and by rules and regulations adopted by the Commission under that section; and

3. The officers and members of the board of directors of the Enterprise file with the Commission all reports and forms relating to the common stock of the Enterprises required pursuant to section 16 of the Exchange Act and by rules and regulations adopted by the Commission under that section.

Section 1730.4 Submission of Disclosures

This section would require that, unless otherwise directed by OFHEO, the Enterprises must provide to OFHEO on a concurrent basis copies of all disclosures filed with the SEC under § 1730.3.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation would not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. The proposed regulation, however, has been submitted to the Office of Management and Budget (OMB) for review under other provisions of Executive Order 12866 as a significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant

economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of 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.

Executive Order 13132, Federalism

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

List of Subjects in 12 CFR Part 1730

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

Accordingly, for the reasons stated in the preamble, OFHEO proposes to add part 1730 to subchapter C of 12 CFR chapter XVII to read as follows:

Subchapter C—Safety and Soundness**PART 1730—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION****Sec.**

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

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

§ 1730.1 Purpose.

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

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

§ 1730.2 Definitions.

For purposes of this part, the term:

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

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

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

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

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

§ 1730.3 Periodic disclosures.

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

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

(1) In the case of an Enterprise having a class of securities registered pursuant to section 12 of the Exchange Act, the Enterprise prepares and makes public an annual report, quarterly report and current reports and such other materials that may be required under the rules and regulations of the Commission, including interpretations of the

Commission and its staff and rules governing audited financial statements;

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

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

§ 1730.4 Submission of disclosures.

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

Dated: January 15, 2003.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–1298 Filed 1–22–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2002–13362; Airspace Docket No. 02–ASO–7]

RIN 2120–AA66

Proposed Revision of VOR Federal Airways and Jet Routes in the Vicinity of Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise four jet routes and seven Very High Frequency Omnidirectional Range (VOR) Federal airways in the vicinity of Savannah, GA, due to the relocation of the Savannah Very High Frequency Omnidirectional Range/Tactical Air

Navigation (VORTAC) facility. The Savannah VORTAC is being relocated at the Savannah International Airport as a result of environmental restrictions at the present VORTAC site. The relocation of the VORTAC requires that segments of the affected jet routes and VOR Federal airways be redescribed.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify both docket numbers, FAA–2002–13362/ Airspace Docket No. 02–ASO–7, at the beginning of your comments.

You may also submit comments through the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, ASO–500, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following