

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

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

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

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

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

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

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

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

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

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

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

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

OFHEO is adopting the regulation as proposed.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

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

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