

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 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,