

managers or directors that is elected or appointed by the owners, and that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, responsibilities, as a board of directors of a bank chartered as a corporation in the State;

(3) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents provide that an owner of the institution is liable for the debts, liabilities, and obligations of the institution in excess of the amount of the owner's investment; and

(4) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights.

(b) For purposes of the Federal Deposit Insurance Act and this Chapter,

(1) Each of the terms "stockholder" and "shareholder" includes an owner of any interest in a bank chartered as an LLC, including a member or participant;

(2) The term "director" includes a manager or director of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of a director of a corporation;

(3) The term "officer" includes an officer of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms "voting stock," "voting shares," and "voting securities" includes ownership interests in a bank chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

By order of the Board of Directors.

Dated in Washington, DC, this 31st day of January, 2003.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

## Resolution

Whereas, the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") is responsible for administering the Federal Deposit Insurance Act ("FDI Act"); and

Whereas, the FDIC is authorized under section 5 of the FDI Act (12 U.S.C. 1815) to approve or disapprove applications for deposit insurance for State banks as well as other depository institutions; and

Whereas, in order for a banking institution to qualify as a "State bank" eligible to apply for deposit insurance, section 3(a) of the FDI Act (12 U.S.C. 1813(a)) generally requires that it be engaged in the business of receiving deposits other than trust funds and that it be "incorporated under the laws of any State"; and

Whereas, the FDI Act does not define the term "incorporated," and there is some uncertainty as to the meaning of the term "incorporated"; and

Whereas, on July 23, 2002, the Board authorized the publication in the **Federal Register** of a proposed rule entitled Insurance of State Banks Chartered as Limited Liability Companies, describing the circumstances under which a bank chartered as a limited liability company would be considered to be "incorporated" and, therefore, eligible to apply for deposit insurance; and

Whereas, the Board requested public comment on the proposed rule and received 23 comment letters, and

Whereas, the staff has reviewed and the Board has considered the comments submitted by the public in response to the proposed rule; and

Whereas, the staff has recommended that the Board adopt a final rule entitled Insurance of State Banks Chartered as Limited Liability Companies as set forth in the attached **Federal Register** document; and

Whereas, the Board has decided to adopt the proposed rule entitled Insurance of State Banks Chartered as Limited Liability Companies as a final rule with certain modifications.

Now, therefore, be it resolved, that the Board does hereby adopt a final rule entitled Insurance of State Banks Chartered as Limited Liability Companies amending 12 CFR part 303 in the manner set forth in the attached **Federal Register** document.

Be it further resolved, that the Board hereby authorizes publication in the **Federal Register** of the attached final amendment to part 303.

Be it further resolved, that the Board hereby directs the Executive Secretary, or his designee, to cause the attached final rule to be published in the **Federal Register** in a form and manner satisfactory to the General Counsel, or his designee, and the Executive Secretary, or his designee.

Be it further resolved, that the Board hereby delegates authority to the General Counsel, or the General Counsel's delegate(s), and to the Executive Secretary, or the Executive Secretary's delegate(s) to make technical, non-substantive changes to

the text of the attached **Federal Register** document.

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1750

RIN 2550-AA26

#### Risk-Based Capital

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

**ACTION:** Final Rule.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is adopting an amendment to Appendix A to Subpart B of 12 CFR part 1750 Risk-Based Capital. The amendment, which more accurately incorporates and implements Financial Accounting Standard 133 in the stress test, is intended to enhance the accuracy of the calculation of the risk-based capital requirement for the Enterprises.

**EFFECTIVE DATE:** March 17, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Robert Pomeranz, Senior Accounting Specialist, Office of Risk Analysis and Model Development, telephone (202) 414-3796 or Marvin L. Shaw, Senior Counsel, telephone (202) 414-8913 (not toll free numbers), 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:

##### Background

OFHEO published a final regulation setting forth a risk-based capital stress test on September 13, 2001, 12 CFR part 1750 (the Rule), which formed the basis for determining the risk-based capital requirement for the federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).<sup>1</sup>

On September 12, 2002, OFHEO published a notice of proposed rulemaking (NPRM), 67 FR 57760, which proposed twelve technical and corrective amendments to the Rule.

<sup>1</sup> Risk-based Capital, 66 FR 47730 (September 13, 2001), 12 CFR part 1750, as amended, 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002), 67 FR 66533 (November 1, 2002).