

These proposed amendments were intended to make minor technical corrections to the Rule, and to account more appropriately for Financial Accounting Standard No. 133 (FAS 133).² This amendment does not alter the FAS 133 accounting standard; it simply corrects the manner in which FAS 133 is incorporated into the stress test. Although the NPRM was subject to a ten-day comment period, OFHEO reopened and extended the comment period regarding the two FAS 133-related proposed amendments, noting that it might move to final action on any of the other ten.³ On November 1, 2002, OFHEO published a final rule, which adopted eight of the technical and corrective amendments.⁴ OFHEO is adopting three of the other amendments in today's final rule.⁵

Comments

OFHEO received comments in response to the NPRM from Fannie Mae, Freddie Mac, FM Watch, and the Honorable Richard H. Baker. In response to the September 30 notice that extended the comment period, OFHEO subsequently received one supplemental comment, which was submitted by FM Watch. The comments addressed the appropriateness of the proposed amendments related to FAS 133. Commenters also addressed procedural issues such as the effective date for the proposed amendments related to FAS 133 and the AOLT V Table, the length of the comment period, and the use of guidelines to supplement the Rule. Commenters also addressed issues related to regulatory impacts, particularly whether the proposal was "economically significant" under Executive Order 12866 and whether the proposal complies with the OFHEO's and the Office of Management and Budget's (OMB's) guidelines on information quality.

² Financial Accounting Standards Board Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," June 1998.

³ Risk-based Capital, 67 FR 61300 (September 30, 2002).

⁴ Risk-based Capital, 67 FR 66533 (November 1, 2002).

⁵ OFHEO has determined that it is appropriate to delay adopting the amendment that would correct the description of "unamortized balance" in Table 3-56 and Table 3-57 (amendment #7 in the NPRM), because that same term appears in numerous other places throughout the rule. OFHEO is conducting a systematic review of the entire Rule to ensure that this term is used and defined consistently. In the meantime, users of the stress test code will not be affected, because the Risk-based Capital Report Instructions, which are used to prepare data for the model, are correct.

Discussion of Issues

1. FAS 133

The NPRM included two changes to reflect the impact of FAS 133 on the stress test. The first of these, number 11 in the NPRM preamble, would modify the calculation of common stock dividends to reflect the effects of FAS 133 adjustments on after-tax income. The second, number 12 in the NPRM preamble, would modify the calculation of risk-based capital to account more fully for changes that FAS 133 required in the computation of Total Capital. As explained below, after considering all the comments on the proposed FAS 133-related changes, OFHEO has determined that the changes are appropriate and timely and is adopting them as proposed. Changes in the language from the proposed amendments clarify the rule, but have no substantive affect.

All five comment letters addressed the FAS 133-related changes. Both Enterprises were supportive of the changes, but suggested that OFHEO not waive the 30-day delay in effective date that is ordinarily required of final rules. Congressman Baker's letter voiced concern that the impact on the Enterprises' capital from amendment number 12 was so significant that OFHEO should extend the comment period.⁶

As noted above, FM Watch provided two comment letters. The first, which was submitted within the initial 10-day comment period, requested additional time for comment and urged OFHEO to delay action on the changes related to FAS 133 until OFHEO had more data on the affect of those changes on the Enterprises' risk-based capital. The letter also questioned whether the thirty percent add-on for management and operations risk should be applied after, rather than before FAS 133-related adjustments were made to the capital requirement. In FM Watch's second letter, received during the extended comment period, it stated that without additional background as to the implications OFHEO anticipates from the amendment, FM Watch was unable to provide informed comments on the proposal. The second letter, therefore, largely reiterated its earlier comments on the FAS 133-related amendments and requested that OFHEO defer action until additional quarters of data on the financial impact of the changes are available.

None of the comment letters took issue with the need for or the importance of the proposed FAS 133-

related changes. Two commenters believed it necessary to delay action until the impact of the changes on the Enterprises' capital could be measured for a few more quarters. Neither, however, recommended that the change should not be implemented eventually. Nor did any commenter suggest that the proposed changes did not tie capital more closely to risk or that there was a better alternative methodology.

Commentary regarding the final rule's effective date was unanimous in supporting a delayed effective date for implementation of these amendments. The Administrative Procedure Act, 5 U.S.C. 552(d), provides that the effective date for substantive rules will be delayed at least 30 days after publication, except in certain circumstances not applicable in this case. Accordingly, OFHEO has determined these changes take effect 30 days after the notice is published in the **Federal Register**. The effect of this determination is that OFHEO will incorporate these amendments related to FAS 133 in the capital calculation process starting with data submitted by the Enterprises for the fourth quarter of 2002, which OFHEO anticipates receiving from the Enterprises in early 2003. The first capital classification under the amended rule will occur approximately two months after publication.

Two of the comments suggested that the proposed change related to the effect of FAS 133 on total capital may be in error by adding the effects of FAS 133 after the thirty percent add-on for management and operations risk. After consideration of these comments, OFHEO has decided to utilize the methodology proposed in the NPRM.

As explained in greater detail in the NPRM preamble, the stress test, in essence, measures the amount of capital that would be consumed by an Enterprise during the ten-year stress period. This amount of capital is referred to in the amended regulation as "stress-test capital." The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (1992 Act) provides that stress-test capital should be increased by thirty percent to account for management and operations risk. The proposed amendment follows exactly that approach. However, the statute also requires that the risk-based capital requirement be expressed as an amount of "total capital," which can be compared to an Enterprise's current total capital to determine whether a deficiency exists. Because total capital is adjusted up or down before the start of the stress test to delete the impact of

⁶ *Id.* note 3.