

FAS 133, it is appropriate to make the opposite adjustment at the end of the calculation, so as to compare apples with apples (or total capital with total capital).⁷ Adding the FAS 133 impact in before the thirty percent add-on, as FM Watch suggests, would cause the adjustment at the end to be thirty percent greater than the adjustment at the beginning, overstating the value (in either a positive or negative direction) of the derivatives in an Enterprise's portfolio. OFHEO has not found that modifying its proposed approach in that manner would improve the sensitivity of the stress test to risk. Further, no commenter has identified a compelling rationale for such a change.

FM Watch contends that OFHEO lacks authority under the 1992 Act to add in the FAS 133-related adjustment after the 30 percent add-on. However, the Act expresses no such limitation on OFHEO's broad discretion to determine appropriate losses or gains on interest rate hedging activities, which are, in part, reflected in the changes in derivatives market value that FAS 133 adds to total capital. 12 U.S.C. 4611(a)(4).

2. Use of Guidelines

OFHEO proposed to amend the rule by replacing a static table containing fixed weighted average amortized original LTV (AOLTV) values with a notation that the table would be updated as necessary with a guideline (Guideline 404) that would be available on OFHEO's web site. Other guidelines related to Risk-Based Capital include Guideline 402 "Interest Rates" and Guideline 403 "Average Loan Size."

Freddie Mac stated that OFHEO is required by statute to issue all provisions related to risk-based capital requirements through notice-and-comment rulemaking, as opposed to OFHEO's reference to guidelines. Specifically, Freddie Mac believes that the Rule must include detailed descriptions of the precise methodologies that such guidelines

would apply. Freddie Mac further stated that a change in a guideline should be effective only as of the end of the first reporting period beginning 60 days or more after the publication of such change.

OFHEO disagrees with Freddie Mac's view that guidelines are inappropriate. OFHEO believes that guidelines are necessary and appropriate for various aspects of implementing the Risk-Based Capital Requirement, provided the guideline addresses the finer details of the stress test where OFHEO requires the flexibility to make rapid or frequent changes, such as updating index changes. Such guidelines, which are used by other financial regulators, allow rapid response to rapidly changing circumstances and can be incorporated into the rule at a later date if such an incorporation appears advisable.

As to the effective dates for guidelines, OFHEO does not feel it necessary to announce a fixed rule. In the event that a new guideline or change to a guideline might impact capital significantly, OFHEO will consider the need for the Enterprises to plan their business strategies with capital requirements in mind. In this case, the Enterprises have had sufficient notice of Guideline 404, given its minor impact, to adapt to it. Accordingly, OFHEO has determined that a 30-day delay in effectiveness is adequate.

3. Comment Period

Congressman Baker and FM Watch requested a longer period of time for public comment on the proposed change related to FAS 133. In response to these requests, OFHEO extended the comment period until October 29, 2002. This extension allowed the public approximately six weeks to comment on the initial proposal. Only one commenter, FM Watch, submitted a comment during the extended comment period. Its comment simply amplified its earlier position.

4. Other Comments

Other comments received are beyond the scope of the amendment. Because these comments are not relevant to the substance of the proposal, they are not addressed in the preamble.

Regulatory Impacts

Executive Order 12866

OMB determined that these amendments are "significant" for purposes of review under EO 12866.

Two commenters questioned OFHEO's conclusion that the FAS 133 amendments are not economically significant within the meaning of

Executive Order 12866. Both comments referred to the fact that the changes would have impacted Freddie Mac's risk-based capital requirement by more than \$1.6 billion in a recent period. Neither comment, however, contends that the rule has resulted in costs to the Enterprises in excess of \$100 million. Because the minimum capital requirement would have required more capital than the amended risk-based requirement in that period, the change would not have required Freddie Mac to raise any additional capital. Therefore, the commenters have not demonstrated that the change would have created cost for Freddie Mac. However, even if the amendment were to have the affect in some future period of requiring an Enterprise to raise capital or otherwise alter its hedging strategies, it is speculative to opine at this point that, in the absence of this amendment, the Enterprise would not have recognized the capital problem with its internal stress tests and taken equally expensive measures to deal with it.

Further, this essentially technical change, required to implement accounting standards imposed by a separate regulatory authority, does not raise the type of economic issues for which the detailed cost/benefit analysis required by the Executive Order was intended. No commenter has suggested that there is some less expensive means of implementing FAS 133 in the risk-based capital regulation or that OFHEO should continue to account for FAS 133 improperly.

Nevertheless, given the fact that this regulation is new and only recently became fully enforceable, OMB has exercised its discretion to review the FAS 133-related amendments formally to determine whether they have any important policy implications for the Administration or other Federal agencies.

OMB Information Quality Guideline

An additional issue raised by FM Watch concerned the application of OFHEO's recently issued "Final Guidelines for Ensuring Quality of Disseminated Information and Procedures for Correction by the Public" (67 FR 63672, September 15, 2002) (the Information Quality Guideline). In its letter, FM Watch indicates that the Rule may not be consistent with OFHEO's Information Quality Guideline because (i) in the two-day period between the posting of the amendment on the OFHEO Web site and publication in the **Federal Register** OFHEO revised the estimated impact of the FAS 133 amendments and (ii) FM Watch was unable to replicate OFHEO's

⁷ Mathematically, the same result could be achieved by simply comparing starting capital (the capital at the beginning, "time zero," of the stress period) to stress test capital plus thirty percent. This was the way OFHEO had structured the calculation until FAS 133 altered the composition of total capital by including some changes in the market value of derivatives. OFHEO determined that it is unnecessarily complex to estimate market values throughout the stress test and, therefore, adjusted the starting amount of total capital to remove the market value changes. In order to provide a risk-based capital requirement that can be compared directly to actual, or unadjusted, "total capital," it is necessary to reverse-adjust stress test capital (which does not include market value changes) by adding back the market value changes that were removed at the start of the stress test.