

§§ 1710.3–1710.9

who reports directly to the chairperson, vice chairperson, chief operating officer, or president of an Enterprise.

(j) *NYSE* means the New York Stock Exchange.

(k) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(l) *Senior executive officer* means the chairperson of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairperson, any executive vice president of an Enterprise, and any individual, without regard to title, who has similar responsibilities.

§§ 1710.3–1710.9 [Reserved]

Subpart B—Corporate Practices and Procedures

§ 1710.10 Law applicable to corporate governance.

(a) *General*. The corporate governance practices and procedures of each Enterprise shall comply with applicable chartering acts and other Federal law, rules, and regulations, and shall be consistent with the safe and sound operations of the Enterprise.

(b) *Election and designation of body of law*. (1) To the extent not inconsistent with paragraph (a) of this section, each Enterprise shall follow the corporate governance practices and procedures of the law of the jurisdiction in which the principal office of the Enterprise is located, as amended; Delaware General Corporation Law, Del. Code Ann. tit. 8, as amended; or the Revised Model Business Corporation Act, as amended.

(2) Each Enterprise shall designate in its bylaws the body of law elected for its corporate governance practices and procedures pursuant to this paragraph within 90 calendar days from August 5, 2002.

§ 1710.11 Board of directors.

(a) *Membership*—(1) *Limits on service of board members*—(i) *General requirement*. No board member of an Enterprise may serve on the board of directors for more than 10 years or past the age of 72, whichever comes first; provided, however, a board member may serve his or her full term if he or she has served less than 10 years or is 72 years on the

12 CFR Ch. XVII (1–1–10 Edition)

date of his or her election or appointment to the board.

(ii) *Waiver*. Upon written request of an Enterprise, the Director may waive, in his or her sole discretion and for good cause, the limits on the service of a board member under paragraph (a)(1)(i) of this section.

(2) *Independence of board members*. A majority of seated members of the board of directors of an Enterprise shall be independent board members, as defined under rules set forth by the NYSE, as amended from time to time.

(b) *Meetings, quorum and proxies, information, and annual review*—(1) *Frequency of meetings*. The board of directors of an Enterprise shall meet at least eight times a year and no less than once a calendar quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(2) *Non-management board member meetings*. Non-management directors of an Enterprise shall meet at regularly scheduled executive sessions without management participation.

(3) *Quorum of board of directors; proxies not permissible*. For the transaction of business, a quorum of the board of directors of an Enterprise is at least a majority of the seated board of directors and a board member may not vote by proxy.

(4) *Information*. Management of an Enterprise shall provide a board member of the Enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

(5) *Annual review*. At least annually, the board of directors of an Enterprise shall review, with appropriate professional assistance, the requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties.

[70 FR 17310, Apr. 6, 2005]

§ 1710.12 Committees of board of directors.

(a) *General*. The board of directors may rely, in directing the Enterprise, on reports from committees of the board of directors, provided, however, that no committee of the board of directors shall have the authority of the

Federal Housing Enterprise Oversight, HUD

§ 1710.15

board of directors to amend the bylaws and no committee shall operate to relieve the board of directors or any board member of a responsibility imposed by applicable law, rule, or regulation.

(b) *Frequency of meetings.* A committee of the board of directors of an Enterprise shall meet with sufficient frequency to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(c) *Required committees.* An Enterprise shall provide for the establishment of, however styled, the following committees of the board of directors, which committees shall be in compliance with the charter, independence, composition, expertise, duties, responsibilities, and other requirements set forth under section 301 of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204 (Jul. 30, 2002) (SOA), as amended from time to time, with respect to the audit committee, and under rules issued by the NYSE, as amended from time to time—

- (1) Audit committee;
- (2) Compensation committee; and
- (3) Nominating/corporate governance committee.

[67 FR 38370, June 4, 2002. Redesignated and amended at 70 FR 17310, 17311, Apr. 6, 2005]

§ 1710.13 Compensation of board members, executive officers, and employees.

(a) *General.* Compensation of board members, executive officers, and employees of an Enterprise shall not be in excess of that which is reasonable and appropriate, shall be commensurate with the duties and responsibilities of such persons, shall be consistent with the long-term goals of the Enterprise, shall not focus solely on earnings performance, but shall take into account risk management, operational stability and legal and regulatory compliance as well, and shall be undertaken in a manner that complies with applicable laws, rules, and regulations.

(b) *Reimbursement.* If an Enterprise is required to prepare an accounting restatement due to the material non-compliance of the Enterprise, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the Enter-

prise shall reimburse the Enterprise as provided under section 304 of the SOA, as amended from time to time. This provision does not otherwise limit the authority of OFHEO to employ remedies available to it under its enforcement authorities.

[67 FR 38370, June 4, 2002. Redesignated and amended at 70 FR 17310, 17311, Apr. 6, 2005]

§ 1710.14 Code of conduct and ethics.

(a) *General.* An Enterprise shall establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the Enterprise to discharge their duties and responsibilities, on behalf of the Enterprise, in an objective and impartial manner, and that includes standards required under section 406 of the SOA, as amended from time to time, and other applicable laws, rules, and regulations.

(b) *Review.* Not less than once every three years, an Enterprise shall review the adequacy of its code of conduct and ethics for consistency with practices appropriate to the Enterprise and make any appropriate revisions to such code.

[70 FR 17311, Apr. 6, 2005]

§ 1710.15 Conduct and responsibilities of board of directors.

(a) *Purpose.* The purpose of this section, and of this subpart, is to set forth minimum standards of the conduct and responsibilities of the board of directors in furtherance of the safe and sound operations of each Enterprise. The provisions of this section neither provide shareholders of an Enterprise with additional rights nor impose liability on any board member under State law.

(b) *Conduct and responsibilities.* The board of directors of an Enterprise is responsible for directing the conduct and affairs of the Enterprise in furtherance of the safe and sound operation of the Enterprise and shall remain reasonably informed of the condition, activities, and operations of the Enterprise. The responsibilities of the board of directors include having in place