

payment or partial payment on or before the date it is due.

§ 1701.6 Delinquent payments.

(a) The Director may assess interest and penalties on delinquent semiannual payment or partial payments collected under this part in accordance with 31 U.S.C. 3717 (Interest and Penalty on Claims) and 12 CFR part 1704 (debt collection). The Director may waive interest and penalties in his or her discretion.

(b) Any interest and penalties collected under this section shall be transferred to the general fund of the Treasury of the United States.

§ 1701.7 Enforcement of payment.

Notwithstanding § 1701.6, the Director may enforce the payment of assessments under this part pursuant to the authorities of sections 1371 (cease-and-desist proceedings) (12 U.S.C. 4631), 1372 (12 U.S.C. 4632) (temporary cease-and-desist orders), and 1376 (12 U.S.C. 4636) (civil money penalties) of the Act.

§ 1701.8 Deposit in fund.

OFHEO shall deposit annual assessments collected under this part in the Federal Housing Enterprise Oversight Fund established in the Treasury of the United States.

Dated: December 19, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00-32780 Filed 12-26-00; 8:45 am]

BILLING CODE 4220-01-U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1770

RIN 2550-AA13

Executive Compensation

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight ("OFHEO") solicits comments on this proposal to adopt a regulation to clarify the procedures OFHEO employs in overseeing compensation provided by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, "the Enterprises") to their executive officers. The proposed regulation would largely

formalize processes currently used by OFHEO in performing its executive compensation oversight responsibilities. The processes require the submission of relevant information by the Enterprises on a timely basis to enable OFHEO to efficiently carry out its executive compensation functions.

DATES: Written comments regarding the Notice of Proposed Rulemaking must be received on or before March 27, 2001.

ADDRESSES: Comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at <http://www.ofheo.gov>. OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5" disk. Alternatively, comments may be submitted via electronic mail to: RegComments@ofheo.gov.

FOR FURTHER INFORMATION CONTACT: Christine C. Dion, Associate General Counsel, telephone (202) 414-3838 (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. Statutory Framework

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102-550, entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992" (the "Act"),¹ established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. Generally, OFHEO is the safety and soundness regulator of two of the nation's largest housing-related government sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises"). In addition to establishing OFHEO, the Act made amendments to the Enterprises' enabling statutes (collectively, the

"charter acts"),² in part to accommodate OFHEO's statutory supervisory powers.

Included in the supervisory responsibilities of the Director of OFHEO (the "Director") is oversight of compensation provided by the Enterprises to their respective executive officers. Briefly, the Director's statutory oversight of executive compensation involves two statutory mandates: (1) the prohibition of excessive compensation, as required by the Act; and (2) the prior review of termination benefits, as required by the charter acts. Notably, the differing statutes use similar but not identical terms in delineating the standards and identifying the different comparator groups to be used in these matters.

Specifically, the Act requires the Director to prohibit the Enterprises from providing compensation to any executive officer that is not reasonable and comparable with that paid by similar businesses to executives doing similar work. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies.³

The charter acts were amended by the Act to similarly provide that an Enterprise may only pay compensation that it determines is reasonable and comparable with compensation for employment in other similar businesses, and that the Enterprise must report annually to Congress on the comparability of the compensation policies for their employees with the compensation policies of other similar businesses.⁴ The Enterprises have the general power to select the individuals who will work for them and to set their specific compensation. The Act explicitly provides that OFHEO may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises.⁵

To effectuate OFHEO's charge to prohibit excessive compensation, the Act empowers OFHEO to take such actions and perform such functions as the Director determines to be necessary.⁶ OFHEO may also require an Enterprise to submit reports and special reports as deemed appropriate and in such form as the Director may require.⁷ Moreover, OFHEO has express statutory

² Federal National Mortgage Association Charter Act (12 U.S.C. 1716-1723i) and Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451-1459).

³ Section 1318(a) (12 U.S.C. 4518(a)).

⁴ Section 309(d)(2) and (3) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(2) and (3)) and section 303(c) and (h) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(c) and (h)).

⁵ Section 1318(b) (12 U.S.C. 4518(b)).

⁶ Section 1313(8) (12 U.S.C. 4513(8)).

⁷ Section 1314(a) (12 U.S.C. 4514(a)).

¹ 12 U.S.C. 4501 *et seq.*

authority to retain any consultant that the Director determines is necessary to assist in such matters.⁸ The Act also grants OFHEO a wide array of enforcement powers. Thus, without regard to the capital condition of an Enterprise, the Director can issue a notice of charges, or take such other enforcement action, for conduct violative of the compensation provisions of the Act, the charter acts or this regulation.⁹ The Director can require an Enterprise, or any executive officer or member of the board of directors to correct or remedy any violation as the Director determines to be appropriate.¹⁰

In addition to prohibiting the payment of excessive executive compensation, OFHEO is empowered to approve individual termination packages provided by the Enterprises to their executive officers. The respective charter acts of the Enterprises were identically amended by the Act to provide that an Enterprise may not enter into an agreement or contract to provide for payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by OFHEO.¹¹ The Act further amended the charter acts to prohibit the Director from approving termination benefits that are not comparable to such benefits provided by other businesses to executives doing similar work. Businesses used for comparison purposes include public and private entities involved in financial services and housing.

These amendments to the charter acts were effective after October 28, 1992. Therefore, agreements to provide termination payments to executives that were entered into before that date are not explicitly subjected to retroactive review for approval or disapproval by OFHEO. However, the amended charter acts provide that any subsequent renegotiation, amendment or change to any such agreement entered into on or before October 28, 1992, is to be considered as entering into an agreement subject to approval by OFHEO. An extension of such an agreement is deemed to constitute a change subject to OFHEO's prior approval. OFHEO's approval is required

regardless of how such an extension is structured, e.g., by a written agreement or by a resolution adopted by the board of directors of the Enterprise.

The requirement that OFHEO receive and approve termination provisions before an agreement or change is effective may be met when new executive officers are hired or contracts and agreements with existing executive officers are amended if such contracts or agreements contain a provision noting that termination benefits provided under the agreements are not effective until approved by OFHEO.

The term "executive officer" for these purposes is defined to include an Enterprise's chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman and any executive vice president, as well as any senior vice president (SVP) "in charge of a principal business unit, division or function."¹² The Director has also found the term to include any individual who acts as the chief operating officer of an Enterprise. Additionally, the term "executive officer" includes any individual who performs functions similar to such positions, whether or not the individual has an official title.

For purposes of this regulation, the term "executive officer" includes any SVP in charge of a principal business unit, division or function as well as any individual, however titled, who has similar authority. A reading of the statute joined with an analysis of job functions at the Enterprises could lead to a reasonable determination that all current senior vice presidents are subject to the provisions of this section. If an individual is identified by an Enterprise in public disclosures as being an "executive officer," a presumption shall exist that such individual is an executive officer for these purposes. The Act's use of qualifying language in defining "executive officer" suggests that Congress intended OFHEO to classify covered individuals on a functional basis, rather than solely on a basis of title. That is, any officer or

employee who participates or has authority to participate in major policymaking functions is deemed to be an executive officer, regardless of his or her title. Notably, the indicia of a major policymaking function may include the authority to control substantial resources or expend substantial funds of an Enterprise. A major policymaking function is not limited to a revenue-generating function.

The Act defines the term "compensation" to include "any payment of money or the provision of any other thing of current or potential value in connection with employment."¹³ [Emphasis added.] The legislative history of the Act, demonstrates that the term is to be defined broadly.¹⁴ OFHEO's analysis of an executive officer's compensation reasonably includes factors that are weighed by federal bank regulators in similarly assessing compensation issues. The definition of "compensation" adopted by the federal banking agencies is all-inclusive, encompassing all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer including, but not limited to, payments and benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post employment benefit or other compensatory arrangement.¹⁵

II. Background

The legislative history of the Act and that of contemporaneously enacted federal banking legislation reveal that Congress viewed executive compensation to be a serious matter of safety and soundness concern. In discussing the need for oversight of the executive compensation provided by the Enterprises, the congressional sponsor of language relating to executive compensation explicitly referred to similar legislation earlier enacted in the same Congress to require the federal bank regulators to adopt safety and soundness standards affecting, among other things, executive compensation paid by insured banks and thrift institutions, as well as their parent

¹² Section 1303(7) (12 U.S.C. 4502(7)). The terminology used in defining an "executive officer" under OFHEO's statute is essentially similar to the definition of "executive officer" and "officer" contained in the reporting rules of the Securities and Exchange Commission (SEC). See SEC Rule 3b-7 (17 CFR 240.3b-7) and SEC Rule 16a-1(f) (17 CFR 240.16a-1(f)) (1999). See also Note to Rule 16a-2. For purposes of provisions in the Charter Acts relating to compensation, the term "executive officer" has the meaning given the term in section 1303 of OFHEO's statute. See section 309(d)(3)(C) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(3)(C)) and section 303(H)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(h)(3)).

⁸ Section 1315(e) (12 U.S.C. 4515(e)).

⁹ Section 1371(a)(3) (12 U.S.C. 4631) and section 1372 (12 U.S.C. 4632).

¹⁰ Section 1371(d)(7) (12 U.S.C. 4631(d)(7)).

¹¹ Section 309(d)(3)(B) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(3)(B)) and section 303(h)(2) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(h)(2)).

¹³ Section 1303(3) (12 U.S.C. 4502(3)).

¹⁴ See, e.g., Floor discussion on S. 2733 by Senator Levin at 138 Cong. Rec. S. 17923 (October 8, 1992).

¹⁵ See the definitional section of the safety and soundness standards of the Office of the Comptroller of the Currency at 12 CFR Part 30, App. A; the Board of Governors of the Federal Reserve System at 12 CFR Part 208, App. D-1; the Federal Deposit Insurance Corporation at 12 CFR Part 364, App. A and the Office of Thrift Supervision at 12 CFR Part 570, App. A.

holding companies.¹⁶ The statutory authorities of OFHEO and the banking agencies, however, are not identical in this regard.¹⁷ OFHEO treats as an unsafe and unsound practice any compensation arrangement that would result in an executive of an Enterprise receiving compensation that is excessive or termination benefits that are not comparable to compensation provided by other businesses to executives doing similar work.

With respect to its statutory mandate to prohibit excessive executive compensation, OFHEO evaluates all aspects of each Enterprise's executive compensation practices and policies, and periodically undertakes a study to compare compensation of executives at the Enterprises with compensation of executives in other similar businesses (including other publicly held financial institutions or major financial services companies). OFHEO separately reviews termination benefit packages submitted by the Enterprises under the prior approval requirements of the charter acts.

In order to carry out its executive compensation responsibilities, OFHEO requires each Enterprise to make timely submissions of relevant information to OFHEO on both routine and episodic bases.¹⁸ Practice and procedures reflected in this rule have evolved over time. As noted in § 1770.2 of the proposed rule, the purposes of this regulation are to formalize the existing process and to clarify the terms used therein in order to facilitate the routine conduct and enhance the efficiency of OFHEO's procedures.

OFHEO's executive compensation authorities are recited in § 1770.1 of the proposed rule. Definitions applicable to terms used in the proposed rule are enumerated in § 1770.3. Reporting and submission requirements are set forth in § 1770.4.

Specifically, paragraph (a) of § 1770.4 identifies to whom an Enterprise is to make timely submission of relevant information in such fashion as specified by OFHEO. Paragraph (b) lists the categories of information to be provided by the Enterprise to OFHEO. Paragraph (c) sets out when information relevant to the Director's prior approval of termination benefits should be submitted by an Enterprise to OFHEO.

Paragraph (d) specifies what information the Enterprise is to submit and when it must be submitted in order for OFHEO to calculate an executive officer's total termination or severance benefits package.

Section 1770.5 of the proposed rule addresses compliance requirements. Paragraph (a) codifies current practices to require that certain employment agreements expressly state that termination benefits provided therein are not to be effective until approved by the OFHEO. Additionally, the section provides that disclosures to employees should note that alteration of benefit plans that affect the benefits accorded a covered employee, that occur subsequent to OFHEO approval of a termination package, will require OFHEO review of the termination agreement at the time a covered employee terminates their relation with the Enterprise. Paragraph (b) requires the Enterprises to establish written procedures implementing the submission requirements of section 1770.4. Paragraph (c) states that failure by an Enterprise to comply with the requirements of paragraph (a) or (b) of section 1770.5 or the submission requirements of section 1770.4 may be deemed to be an unsafe or unsound practice warranting specific corrective action. Paragraph (d) of section 1770.5 provides that OFHEO may require corrective or remedial action under this regulation by an Enterprise or individual either separately from, in conjunction with, or in addition to any other remedy, or an enforcement action.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not deemed to be a significant rule under Executive Order 12866 because it will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed rule has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this proposed rule under the Regulatory Flexibility Act. The General Counsel certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This proposed rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this rule implements specific statutory requirements. In addition, this rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

List of Subjects in 12 CFR Part 1770

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, OFHEO proposes to add 12 CFR part 1770 to read as follows:

PART 1770—EXECUTIVE COMPENSATION

Sec.

- 1770.1 Authority and scope.
- 1770.2 Purpose.
- 1770.3 Definitions.
- 1770.4 Submissions requirements.
- 1770.5 Compliance.

Authority: 12 U.S.C. 1452(h)(2), 1723a(d)(3)(B), 4501(6), 4502(3), 4502(7),

¹⁶ See note 15 at 17922–17923.

¹⁷ See note 16. The agencies' safety and soundness standards were adopted in 1992 pursuant to section 39 (12 U.S.C. 1831p–1) of the Federal Deposit Insurance Act (FDIA).

¹⁸ OFHEO recognizes the sensitive, nonpublic nature of such information and treats submissions with appropriate safeguards under its internal procedures and regulations.

4513, 4514, 4517, 4518(a), 4631, 4632, 4636, 4641.

§ 1770.1 Authority and scope.

(a) *Authority.* Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*), established the Office of Federal Housing Enterprise Oversight (“OFHEO”) as an independent office within the Department of Housing and Urban Development. In general, OFHEO is the safety and soundness regulator of two housing-related government sponsored enterprises: the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, “the Enterprises”). The supervisory responsibilities of the Director of OFHEO (the “Director”) include oversight of compensation provided by the Enterprises to their executive officers.

(b) *Scope.* The procedures set forth in this regulation apply to the OFHEO’s oversight of executive compensation under the following two statutory mandates:

(1) *Prohibition of excessive compensation.* The Act empowers the Director to prohibit an Enterprise from providing compensation to any executive officer that is not reasonable and comparable with that paid by other similar businesses to executives doing similar work, *i.e.*, having similar duties and responsibilities. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies. (12 U.S.C. 4518(a)) To effectuate this compensation oversight responsibility, the Act provides that the Director has full authority to take such actions as the Director determines are necessary. (12 U.S.C. 4513(8)) However, the Director may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises. (12 U.S.C. 4518(b))

(2) *Prior approval of termination benefits.* The Enterprises’ enabling statutes (“charter acts”) provide that the Enterprises may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by the Director. The Director may only approve termination benefits that are comparable to benefits provided by other businesses to executives doing similar work. Businesses used for

comparison purposes include public and private entities involved in financial services and housing interests. Agreements or contracts that provide for termination payments to executives that were entered into before October 28, 1992 are not retroactively subject to approval or disapproval by the Director. However, a renegotiation, amendment or change to such an agreement or contract entered into on or before October 28, 1992 shall be considered as entering into an agreement or contract that is subject to approval by the Director. (Section 309(d)(3)(B); 12 U.S.C. 1723a(d)(3)(B) of Fannie Mae’s Charter Act; Section 303(h)(2); 12 U.S.C. 1452(h)(2) of Freddie Mac’s Corporation Act)

§ 1770.2 Purpose.

In exercising responsibilities related to executive compensation, the Director has established a structured process for the submission of relevant information by each Enterprise. This part codifies those procedures and clarifies the terms used therein in order to facilitate the routine conduct and enhance the efficiency of OFHEO’s oversight.

§ 1770.3 Definitions.

The following definitions apply to the terms used in this part:

(a) *The Act* is Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, Oct. 28, 1992, 106 Stat. 3672, 3941-4012 (1993), separately entitled the “Federal Housing Enterprises Financial Safety and Soundness Act of 1992.”

(b) *Affiliate* means any entity that controls, is controlled by, or is under common control with, an Enterprise.

(c) *Charter acts* mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716-1723i and 12 U.S.C. 1451-1459, respectively.

(d) *Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment.

Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer, including, but not limited to, payments and benefits derived from an employment contract compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post employment benefit or other compensatory arrangement

(e) *Director* means the Director of OFHEO or his or her designee.

(f) *Enterprise* means the Federal National Mortgage Association and the

Federal Home Loan Mortgage Corporation and, except as provided by the Director, any affiliate thereof.

(g) *Executive officer* means, with respect to an Enterprise:

(1) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairman, any executive vice president, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

(2) Any senior vice president (SVP) or other individual with similar responsibilities, without regard to title:

(i) Who is in charge of a principal business unit, division or function, or

(ii) who reports directly to the Enterprise’s Chair, Vice Chair, Chief Operating Officer or President.

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

§ 1770.4 Submission requirements.

(a) *Submission of information to OFHEO.* All information required to be filed for purposes of this regulation is to be provided in a timely fashion by each Enterprise to OFHEO’s Associate Director of the Office of Policy Analysis and Research, as specified in this section, or as designated by the Director.

(b) *Categories of information relating to prohibition of excessive compensation.* The following materials shall be provided by each Enterprise to OFHEO for review:

(1) Minutes and supporting materials and reports from meetings of the Enterprise’s Committee responsible for compensation within a week of Committee approval, where Committee actions are final insofar as affecting a determination regarding a compensation matter, except reports on the performance of specific individuals;

(2) Portions of minutes of the Board of Directors relating to executive compensation and supporting materials of the Committee responsible for compensation (not otherwise provided to OFHEO by the Committee under paragraph (b)(1) of this section), within a week of the meeting of the Board of Directors;

(3) General benefit plans applicable to covered executive officers when adopted or amended;

(4) Any studies the Enterprise conducts or contracts for with respect to compensation of executive officers when finalized;

(5) The Enterprise’s annual compensation report when submitted to Congress;

(6) An updated organization chart as changes occur affecting executive officers;

(7) Proxy statements when issued;
 (8) Information regarding the hiring of and payment of compensation to an executive officer for whom a contract remains under negotiation; and

(9) Such other information as deemed appropriate by the Director.

(c) *Timing of submissions related to prior approval requests of termination benefits.* All relevant information should be provided to OFHEO when an Enterprise:

(1) Enters into any agreement or contract with a new or existing executive officer that includes termination benefits;

(2) Makes any extension or other amendment to such an agreement or contract;

(3) Takes any other action to provide termination benefits to a specific executive officer, regardless of how it is effected;

(4) Makes any changes in post-employment benefit programs affecting multiple executive officers; or

(5) Changes the termination provisions of other compensation programs affecting multiple executive officers.

(d) *Specific information required for calculation of termination benefits.*

Before entering into an agreement or contract to provide termination benefits to an executive officer, and before any renegotiation, amendment or change to such an agreement or contract, an Enterprise shall submit to OFHEO the following materials:

(1) The details of the agreement or program change, *e.g.*, employment agreements, termination agreements, severance agreements, and portions of Board minutes relating to executive compensation and minutes and supporting materials of the compensation committee of the Board;

(2) All information, data, assumptions and calculations for the potential total dollar value or range of values of the benefits provided, such as but not limited to salary, bonus opportunity, short-term incentives, long-term incentives, special incentives and pension provisions or related contract or benefit terms; and

(3) Such other information deemed appropriate by the Director.

§ 1770.5 Compliance

(a) An employment agreement or contract subject to the Director's prior approval, as set forth in § 1770.1(b)(2), may be entered into prior to that approval, *provided that* such agreement or contract specifically provides that termination benefits under the agreement or contract shall not be effective and no payments shall be made

thereunder unless and until approved by OFHEO. Such notice should make clear that alteration of benefit plans subsequent to OFHEO approval under this section, that affect final termination benefits of an executive officer, requires review at the time of the individual's termination from the Enterprise and prior to the payment of any benefits.

(b) The Enterprises shall establish and follow written procedures implementing the submission requirements contained in § 1770.4 within 60 days of the effective date of this regulation.

(c) Failure by an Enterprise to comply with the requirements of paragraph (a) or (b) of this section or the submission requirements of § 1770.4 may be deemed to constitute an unsafe or unsound practice warranting corrective or remedial action by OFHEO.

(d) Action by OFHEO under this regulation may be taken separately from, in conjunction with, or in addition to any other corrective or remedial action, including an enforcement action to require an individual to make restitution to or reimbursement to the Enterprise of improperly paid compensation or termination benefits.

Dated: December 19, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00-32781 Filed 12-26-00; 8:45 am]

BILLING CODE 4220-01-U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1780

RIN 2550-AA16

Rules of Practice and Procedure

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) solicits comment on proposed amendments to OFHEO's rules governing administrative enforcement proceedings. The amendments summarize OFHEO's statutory authority to issue cease and desist orders and to impose various corrective and remedial sanctions, including, among other things, civil money penalties, against the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), as well as their executive officers and directors. By describing the grounds on

which such actions might be instituted, and providing examples of the terms and conditions the agency might impose, OFHEO seeks to ensure greater transparency to the agency's supervisory regime and the safeguards affecting Freddie Mac and Fannie Mae.

DATES: Written comments on the proposed rule must be received by February 26, 2001.

ADDRESSES: All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at <http://www.ofheo.gov>. OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5" disk. Alternatively, comments may be submitted via electronic mail to: RegComments@ofheo.gov.

FOR FURTHER INFORMATION CONTACT:

David W. Roderer, Deputy General Counsel, (202) 414-6924, Jamey Basham, Counsel (202) 414-8906 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877-8339 (TDD *only*).

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development (HUD) with responsibility for ensuring that Fannie Mae and Freddie Mac (collectively, the Enterprises) are adequately capitalized and operate safely and in conformity to the requirements of applicable laws, rules and regulations, including their respective charter acts. The Enterprises are Government-sponsored corporations established under Federal law to effect specific public purposes.¹ These include providing liquidity to the residential mortgage market and promoting the availability of mortgage

¹ See Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; Act at 12 U.S.C. 4561-67, 4562 note.