

(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.

credit benefiting low-and moderate-income families and areas that are underserved by lending institutions.

The express statutory authorities of the Director of OFHEO (Director) under the Act include the primary responsibility of ensuring that the Enterprises operate in a safe and sound manner.² OFHEO's principal responsibility is to ensure the Enterprises are operating in a safe and sound manner, and in compliance with applicable laws and regulations. To this end, the Act grants OFHEO broad statutory powers similar to those of the Federal bank regulatory agencies, including the authority to issue regulations to carry out the Act;³ to conduct examinations of the Enterprises and require the Enterprises to provide financial reports;⁴ to establish capital requirements for the Enterprises;⁵ and, in appropriate circumstances, to take prompt corrective action against any Enterprise that fails to remain adequately capitalized, including possible imposition of a conservatorship.⁶

In addition, the Act grants OFHEO essentially the same administrative enforcement authority as Congress has granted the Federal bank regulatory agencies, including the power to issue temporary and permanent cease and desist orders to an Enterprise or its executive officers or directors, and to impose civil money penalties when appropriate.⁷ Prior to issuing a cease and desist order, OFHEO must conduct a hearing on the record and provide the subject of an order with notice and the opportunity to participate in such hearings. Prior to imposing civil money penalties, OFHEO must provide notice and the opportunity for a hearing to the persons subject to the penalties. Part 1780 of OFHEO's rules and regulations currently sets out the procedural rules under which such notices are provided and hearings conducted.

In this Notice of Proposed Rulemaking (NPR), OFHEO proposes to clarify the agency's enforcement rules at part 1780, which are largely procedural in nature, by describing briefly the categories of circumstances in which OFHEO may initiate enforcement actions, as well as the types of remedies and sanctions OFHEO may impose through a cease and desist order or civil money penalty. By providing the public

with general information about the scope of OFHEO's administrative enforcement authority, OFHEO seeks to effect greater transparency for the OFHEO's supervisory regime and increased public awareness of the supervisory standards and safeguards affecting the Enterprises.

Statutory Enforcement Powers

OFHEO's general enforcement powers are codified in Subtitle C of the Act. Subtitle B of the Act specifies certain enforcement steps required to be taken by OFHEO when an Enterprise is not adequately capitalized, as well as certain discretionary enforcement actions available to OFHEO in such circumstances. Whenever the discretionary provisions of Subtitle B apply, the Director has discretion to take action under Subtitle B alone or to take alternative or simultaneous actions under the provisions of Subtitle C.⁸

OFHEO's enforcement powers extend to affiliates of the Enterprises⁹ and executive officers and directors thereof. The Act defines an affiliate to be any entity that controls, is controlled by, or is under common control with an Enterprise. 12 U.S.C. 4502(1). Congress did not define control, leaving the term instead to be interpreted by OFHEO in its administrative expertise. For these purposes, OFHEO will look to see whether an entity exercises a controlling influence over the management and policies of the particular entity, whether it be by ownership of or the power to vote a concentration of any class of voting securities, the ability to elect or appoint members of the board of directors or officers of the entity, or otherwise. This standard is appropriate, in order to ensure that an Enterprise or an entity controlling it does not manipulate its organizational structure in order to evade OFHEO's enforcement jurisdiction.

The Act, at 12 U.S.C. 4631, authorizes the Director to issue a cease and desist order or orders to an Enterprise or its executive officers or directors. The Director may issue a notice of charges if the Director determines that certain conduct has occurred, or reasonably believes such conduct is about to occur:

- For an adequately capitalized Enterprise any conduct that threatens to cause a significant depletion of core capital, or for an Enterprise that is not adequately capitalized any conduct that is likely to result in a material depletion of core capital;

- Any conduct that could result in the issuance of an order to require an executive officer or director of an Enterprise to reimburse or indemnify the Enterprise, where such person is either unjustly enriched or engaged in knowing misconduct likely to cause substantial loss, as provided under the Act at 12 U.S.C. 4636(b)(3);

- Any conduct that violates a written agreement entered into by the Enterprise with the Director; or

- Any conduct that violates the Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act (collectively, the Charter Acts), or any regulation, rule, or order under such Acts. However, the Director may not enforce compliance with housing goals established pursuant to 12 U.S.C. 4561–4567 under the Act,¹⁰ with 12 U.S.C. 4566 and 4567 under the Act,¹¹ or with 12 U.S.C. 1723a(m)–(n) under the Federal National Mortgage Association Charter Act or 12 U.S.C. 1456(e)–(f) under the Federal Home Loan Mortgage Corporation Act.¹²

Section 4631 authorizes the Director to issue a notice of charges to initiate cease and desist proceedings if an Enterprise, an executive officer, or a director thereof engages in an unsafe or unsound practice or if the Enterprise is in an unsafe or unsound condition. As indicated by the language of the statute and its legislative history,¹³ the unsafe and unsound conduct or condition in question need not be specifically defined as such by a particular statutory or regulatory provision. The Act subjects the Enterprises to an overarching obligation to conduct their operations in a manner that maintains the safe and sound condition of the Enterprise, the boundaries of which are set by OFHEO in its supervisory discretion.¹⁴ Unsafe or unsound practices or conditions are deemed to be violations of the Act for purposes of section 4631(a)(3)(A), justifying the Director's initiation of cease and desist proceedings based on such a violation.

¹⁰ Provisions addressing housing goals under the authority of the Secretary of HUD.

¹¹ Provisions addressing reporting, monitoring and enforcement of housing goal compliance.

¹² Provisions addressing Enterprise data and reports relating to housing goals.

¹³ See, e.g., 68–69 H.R. Rep. 102–206, 102nd Cong., 1st Sess. (1991) (to prohibit outright any new undertaking which presents excessive management or operations risk, Director can obtain judicial enforcement of temporary cease and desist order).

¹⁴ As is discussed in the "Background" material above, OFHEO exercises exclusive authority for matters relating to the Enterprises' safety and soundness, and vested with broad powers to that end. See, e.g., 12 U.S.C. 4513(a), 4513(b)(5), 4517(a), and 4521(a)(2)–(3).

² 12 U.S.C. 4513(a), 4513(b)(1), 4517(a), 4521(a)(2)–(3).

³ 12 U.S.C. 4513(b)(1).

⁴ 12 U.S.C. 4514, 4517.

⁵ 12 U.S.C. 4611–4614.

⁶ 12 U.S.C. 4615–4623.

⁷ 12 U.S.C. 4631–4641.

⁸ See 12 U.S.C. 4631(b).

⁹ The Act defines the term "enterprise" to include any affiliates thereof. 12 U.S.C. 4502(6).

In directing OFHEO to ensure the safety and soundness of the Enterprises, the Act does not define or elaborate upon what constitutes an unsafe and unsound practice or condition. As similarly used in connection with the federal bank regulatory agencies after which Congress in large part patterned OFHEO's supervisory regime, the concept of safety and soundness is widely acknowledged to be a broad prudential standard left to the expert agency to define and refine over time in light of changes in the environment and marketplace affecting the Enterprises. The concept encompasses any action or inaction that contravenes prudent standards of operation that might result in loss or damage to the Enterprise, including failure to respond appropriately to changes in circumstances or to unforeseen events. The risk of loss or damage need not be immediate, so long as the loss or damage is likely if the conduct continued unabated or action is not taken to address the condition. Nor is it necessary that the loss or damage be of such magnitude to threaten the capital or financial integrity of the Enterprise. Prompt corrective action procedures under subtitle B of the Act separately address such thresholds.

If the Director finds that the record establishes the infraction forming the basis of the cease and desist the Director has wide latitude in structuring the remedial provisions of a cease and desist order. In addition to ordering the Enterprise, its executive officers, or its directors to cease and desist the infraction, section 4631 authorizes the Director to include provisions limiting the activities or functions of the Enterprise or its executive officers or directors, as well as provisions requiring affirmative action to correct or remedy any condition resulting from the infraction, as the Director determines appropriate. This includes, but is not limited to, provisions to:

- Require the Enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;
- Restrict growth of the Enterprise;
- Require the Enterprise to dispose of any particular asset or assets; and
- Require the Enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director).

The Director may include other corrective or remedial provisions as deemed appropriate, such as requirements to obtain new capital; or directives to improve design or implementation of internal controls,

management reporting systems, risk measurement and limits, compliance efforts, or policies and procedures. Section 4631 also provides that the Director may order an executive officer or director of an Enterprise to make restitution or reimbursement to the Enterprise, or to provide indemnification or guarantee against loss, to the extent such person was unjustly enriched in connection with the particular conduct or violation in question, or was engaged in knowing conduct that caused or would be likely to cause a substantial loss to the Enterprise.

Under the Act at 12 U.S.C. 4632, the Director may issue a temporary cease and desist order. A temporary cease and desist order may be issued if any conduct or threatened conduct specified in a notice of charges served on the Enterprise, executive officer, or director is likely to cause any of the following conditions or circumstances prior to proceedings for a permanent cease and desist order being completed:

- Insolvency;
- Significant depletion of the core capital of the Enterprise; or
- Other irreparable harm to the Enterprise.

The temporary order may direct the Enterprise, executive officer, or director to cease the conduct and take affirmative action to prevent the insolvency, depletion of capital, or harm for the duration of the cease and desist proceedings. Also, if a notice of charges specifies that the books and records of the Enterprise are so incomplete or inaccurate that the Director is unable through normal supervisory processes to determine either the financial condition of the Enterprise or the details or purpose of transactions that may have a material effect on the financial condition of the Enterprise, the Director may issue a temporary order concerning the records. The order may direct the Enterprise to cease the activity or practice that gave rise to the incomplete or inaccurate state of the records, and may direct the Enterprise to make the records complete and accurate.

The Act, at 12 U.S.C. 4636, also authorizes the Director to impose civil money penalties up to \$5,000¹⁵ (a first-

¹⁵ For violations or conduct occurring after October 23, 1996, the maximum amount of each tier of civil money penalties is ten percent higher than the amounts set out in section 1376 of the Act, in accordance with the Debt Collection Improvement Act of 1996 (28 U.S.C. 2461 note). A table of the increased maximum penalties is available at section 1780.80 of OFHEO's rules and regulations (12 CFR § 1780.80).

tier CMP) for each day that an Enterprise:

- Violates the Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act (collectively, the Charter Acts), or any regulation, rule, or order under such Acts. However, the Director may not enforce compliance with housing goals established pursuant to 12 U.S.C. 4561–4567 under the Act, with 12 U.S.C. 4566 and 4567 under the Act, or with 12 U.S.C. 1723a(m)–(n) under the Federal National Mortgage Association Charter Act or 12 U.S.C. 1456(e)–(f) under the Federal Home Loan Mortgage Corporation Act.

- Violates a written agreement entered into by the Enterprise with the Director; or

- Violates any permanent or temporary cease and desist order entered under sections 4631 or 4632, or orders entered pursuant to 12 U.S.C. 4615 or 4616 under the Act.¹⁶

First-tier CMPs are not appropriate if the violation or conduct at issue consists of an unsafe and unsound practice that is not prohibited by a particular statute, regulation, or order. Under the language of section 4636, such violations or conduct are susceptible to second- or third-tier CMPs, if the aggravating circumstances discussed below are also present.¹⁷

Section 4636 authorizes the Director to impose civil money penalties on an Enterprise up to \$25,000 for each day of violation or conduct, or on an executive officer or director of up to \$10,000 for each day of violation or conduct (a second-tier CMP). Second-tier CMPs are applicable to the same kinds of infractions covered by first-tier CMPs, as well as any violation or conduct that causes or is likely to cause a loss to the Enterprise, if the Director also find that the violation or conduct:

- Is part of a pattern of misconduct; or

¹⁶ Provisions setting out supervisory actions applicable to undercapitalized Enterprises and significantly undercapitalized Enterprises, respectively.

¹⁷ Although unsafe and unsound practices are conduct which violates the Safety and Soundness Act (see the discussion in connection with permanent cease and desist orders above) and first-tier CMPs are applicable to an Enterprise's violation of the Safety and Soundness Act (section 4636(a)(1)), section 4636(a)(4) separately mentions any conduct that causes or is likely to cause a loss to the Enterprise, and first-tier CMPs are only available for conduct violating sections 4636(a)(1)–(3) (section 4636(b)(1)). Nevertheless, first-tier CMPs are applicable to violations of any OFHEO order or regulation setting out safety and soundness standards (or any other applicable regulation or order), as such violations are covered by section 4636(a)(1) without reservation.

• Involved recklessness and caused or would be likely to cause a material loss to the Enterprise.

If the Director finds instead that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to the Enterprise, the Director may impose penalties on an Enterprise of up to \$1,000,000 per day of violation or conduct or on an executive officer or director of up to \$100,000 per day of violation or conduct (a third-tier CMP).

The Director may impose civil money penalties in addition to any other civil remedy or administrative sanctions available under the Act.¹⁸ In determining the appropriateness and amount of a penalty (within the range established for each tier), the Director may give consideration to the following factors:

- The gravity of the violation or conduct;
- Any history of prior violations or conduct;
- The effect of the penalty on the safety and soundness of the Enterprise;
- Any injury to the public;
- Any benefits received; and
- Deterrence of future violations or conduct.

Under section 4636(c)(2), the Director may take into account any other factors that the Director has determined, by regulation, are appropriate. OFHEO proposes to add the following factors to those specified in the statute itself:

- Any related or unrelated previous supervisory actions;
- Any loss or risk of loss to the Enterprise;
- Any attempts at concealment;
- Any circumstances of hardship upon an executive officer or director;
- Promptness and effectiveness of any efforts to ameliorate the consequences of the violation or conduct; and
- Candor and cooperation after the fact.

OFHEO requests public comment specifically addressing these factors, as well as the question of whether OFHEO should adopt other factors as part of this rulemaking.

Under the Act at 12 U.S.C. 4639, hearings concerning cease and desist orders or civil money penalties are to be open to the public, unless the Director determines that an open hearing would be contrary to the public interest. Final orders in cease and desist proceedings or civil money penalty proceedings are also to be made available to the public, as well as any modifications thereto, unless the Director determines in

writing to delay public disclosure for a reasonable time if immediate disclosure would seriously threaten the financial health or safety of the Enterprise.

Proposed Rule Synopsis

The proposed rule amends the scope section of the rule, § 1780.1, to add a brief summary of the Director's legal authorities as discussed above. In addition to the specific question posed above requesting public comments whether OFHEO should expand the list of factors taken into account in setting the amount of a civil money penalty, OFHEO welcomes public comments on all aspects of the proposed rule.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have 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 regulation has not been submitted to the Office of Management and Budget for review.

Unfunded Mandates Reform Act of 1995

This proposed 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 \$100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the proposed rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation 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 the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation only affects the Enterprises, their executive officers, and their directors.

Paperwork Reduction Act of 1995

This proposed rules contain no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set out in the preamble, the Office of Federal Housing Enterprise Oversight proposes to amend 12 CFR part 1780 as follows:

PART 1780—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 1780 is revised to read as follows:

Authority: 12 U.S.C. 4501, 4513, 4517, 4521, 4631–4641.

Subpart A—General Rules

2. Revise § 1780.1 to read as follows:

§ 1780.1 Scope.

(a) *Types of proceedings governed by these rules.* This part prescribes rules of practice and procedure applicable to the following adjudicatory proceedings:

(1) Cease-and-desist proceedings under sections 1371 and 1373, 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 (1992 Act) (12 U.S.C. 4631 and 4633);

(2) Civil money penalty assessment proceedings under sections 1373 and 1376 of the 1992 Act (12 U.S.C. 4633 and 4636);

(3) Civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a; and

(4) Other adjudications required by statute to be determined on the record after opportunity for hearing, except to the extent otherwise provided for in the regulations specifically governing such an adjudication.

(b) *Cease and desist orders.* (1) Grounds for instituting proceedings. Sections 1371(a)–(b) of the 1992 Act

¹⁸ 18 12 U.S.C. 4636(f).

specify when the Director of OFHEO may issue a notice of charges instituting cease and desist proceedings, to be conducted according to the procedural rules in this part. The Director may issue a notice of charges as described in § 1780.20 if the Director determines, or the Director has reasonable cause to believe that, an Enterprise or an executive officer or director thereof has engaged in, or its is about to engage in, any of the following conduct or violations:

(i) For an adequately capitalized Enterprise, any conduct which threatens to cause a significant depletion of the Enterprise's core capital; or for an Enterprise which is not in the adequately capitalized category, any conduct that is likely to result in a material depletion of the Enterprise's core capital;

(ii) Any conduct that may result in the issuance of a cease and desist order that requires an executive officer or director of an Enterprise to make restitution, provide reimbursement, indemnification or guarantee against loss to the Enterprise, where such person was either unjustly enriched or engaged in knowing misconduct likely to cause substantial loss to the Enterprise;

(iii) Any conduct that violates a written agreement entered into by an Enterprise with the Director; or

(iv) Any conduct that violates the 1992 Act, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*), or any regulation, rule, or order under such Acts, or any unsafe and unsound practice (in that it is contrary to prudent standards of operation which might cause loss or damage to the Enterprise, or is likely to cause such loss or damage in the future if continued unabated), or any unsafe and unsound condition, except that the Director may not enforce compliance with housing goals established under subpart B of part 2 of subtitle A of the 1992 Act (12 U.S.C. 4561–4567), with section 1336 or 1337 of the 1992 Act (12 U.S.C. 4566–4567), or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 4566–4567), or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e)–(f)).

(2) *Remedial provisions of cease and desist orders.* As provided by sections 1371(c)–(d) of the 1992 Act, a cease and desist order issued as set out in § 1780.55 may require the Enterprise, or an executive officer or director thereof, to refrain from engaging in conduct or

violations specified in paragraphs (b)(1)(i) through (iv) of this section and/or require correction of an unsafe or unsound condition specified in paragraph (b)(1)(iv) of this section, as found by the Director, and may also require the Enterprise, an executive officer, or director thereof to take such action as the Director determines to be appropriate to correct or remedy the conditions resulting from such conduct or violation. This may include, but is not limited to, provisions to:

(i) Require the Enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(ii) Require the Enterprise to obtain new capital;

(iii) Restrict asset or liability growth of the Enterprise;

(iv) Require the Enterprise to dispose of any asset involved;

(v) Require the Enterprise to improve design or implementation of internal policies, compliance efforts, internal controls, risk measurement and limits, and management reporting systems;

(vi) Require the Enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director);

(vii) Require the Enterprise, an executive officer or director thereof to adhere to limits on activities or functions; or

(viii) Require the Enterprise to take such other action as the Director determines appropriate.

(3) *Restitution and indemnification by executive officers and directors.* As part of the affirmative relief described in paragraph (b)(2) of this section, section 1371(d)(1) of the 1992 Act provides that the Director may require an executive officer or director of an Enterprise to make restitution or reimbursement to the Enterprise, or to provide indemnification or guarantee against loss, to the extent such person was:

(i) Unjustly enriched in connection with the conduct or violation in question; or

(ii) Engaged in such conduct or violation knowingly, and such conduct or violation caused or would be likely to cause a substantial loss to the Enterprise.

(4) *Temporary cease and desist orders.* (i) Under sections 1372(a)–(b) of the 1992 Act, if the Director determines that any conduct or violation or threatened conduct or violation described in the notice of charges in cease and desist proceedings described under § 1780.20 is likely to cause insolvency, to cause significant depletion of core capital, or to cause other irreparable harm to an Enterprise

before proceedings described in this part will be completed, the Director may issue a temporary cease and desist order. Such order may direct the Enterprise, executive officer or director thereof to refrain from the conduct or violation, and to take whatever affirmative action the Director determines to be appropriate to prevent or remedy such insolvency, depletion, or harm pending completion of such cease and desist proceedings.

(ii) In addition, section 1372(c) of the 1992 Act addresses cases in which the Director determines that the books and records of an Enterprise are so incomplete or inaccurate that the Director is unable through normal supervisory processes to determine either the financial condition of the Enterprise or the details or purpose of transactions that may have a material effect on the financial condition of the Enterprise. In connection with issuance of the notice of charges in cease and desist proceedings specified by § 1780.20, the Director may issue a temporary order directing the Enterprise to cease the activity or practice that gave rise, whether in whole or in part, to the incomplete or inaccurate state of the records, and may require the Enterprise to take affirmative action to make the records complete and accurate.

(c) *Civil money penalties.* (1) *First tier CMPs.* Section 1736 of the 1992 Act authorizes the Director to assess civil money penalties against an Enterprise, in proceedings to be conducted according to the procedural rules in this part. The Director may issue a notice of charges to an Enterprise, as described in § 1780.20, to impose money penalties of up to \$5,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in conduct that violates:

(i) The 1992 Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any regulation, rule, or order under such Acts, except with regard to housing goals established under subpart B of part 2 of subtitle A of the 1992 Act, with section 1336 or 1337 of the 1992 Act, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

(ii) Any written agreement entered into by the Enterprise with the Director; or

(iii) Any permanent or temporary cease and desist order entered under sections 1371 or 1372 of the 1992 Act, or sections 1365 (12 U.S.C. 4615, setting out supervisory actions applicable to

undercapitalized Enterprises) or 1366 (12 U.S.C. 4616, setting out supervisory actions applicable to significantly undercapitalized institutions) of the 1992 Act.

(2) *Second tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to \$25,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in the following violation or conduct, or to an executive officer or director of an Enterprise to impose money penalties of up to \$10,000 (adjusted for inflation as described in § 1780.80) for each day such person or persons engages in the following violation or conduct, if the Director finds that the violation or conduct was either part of a pattern of misconduct or involved recklessness and causes or is likely to cause a material loss to the Enterprise:

(i) Any violation described in paragraphs (c)(1)(i) through (iii) of this section; or

(ii) Any conduct that causes or is likely to cause a loss to the Enterprise.

(3) *Third tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to \$1,000,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in a violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, or to an executive officer or director of an Enterprise to impose money penalties of up to \$100,000 (adjusted for inflation as described in § 1780.80) for each day such person or persons engages in such violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, if the Director finds that the violation or conduct was knowing and caused or is likely to cause a substantial loss to the Enterprise.

(4) *Amount of CMPs.* In determining the amount of a civil money penalty within the range of penalties described in paragraphs (c)(1) through (3) of this section, the Director may fashion sanctions in any such amount as deemed to be appropriate taking into consideration such factors as:

(i) The gravity of the violation or conduct;

(ii) Any loss or risk of loss to the Enterprise;

(iii) Any benefits received;

(iv) Any attempts at concealment;

(v) Any history of prior violations or conduct;

(vi) Any related or unrelated previous supervisory actions;

(vii) Any injury to the public;

(viii) Deterrence of future violations or conduct;

(ix) The effect of the penalty on the safety and soundness of the Enterprise;

(x) Any circumstances of hardship upon an executive officer or director;

(xi) Promptness and effectiveness of any efforts to ameliorate the consequences of the violations or conduct; and

(xii) Candor and cooperation after the fact.

(d) *Coordination with other supervisory actions.* In addition to cease and desist and/or civil money penalty proceedings under this part, the 1992 Act grants the Director other authority to take supervisory action, including requiring mandatory and discretionary supervisory actions against an Enterprise that fails to remain adequately capitalized; appointment of a conservator for an Enterprise; entering into a written agreement the violation of which is actionable through proceedings under this part, or any other formal or informal agreement with an Enterprise as may be deemed by the Director to be appropriate. Under the 1992 Act, the selection of the form of supervisory action is within the Director's discretion, and the selection of one form of action or a combination of actions does not foreclose the Director from pursuing any other supervisory action.

(e) *Proceedings against affiliates.* Under subtitle C of the 1992 Act, the Director may institute proceedings as described under this part against an affiliate of an Enterprise as well as an executive officer or director of such affiliate. An entity is affiliated with an Enterprise if the entity controls the Enterprise, is controlled by the Enterprise, or is under common control with the Enterprise. For purposes of this part, control means the ability to exercise a controlling influence over the management and policies of the entity or Enterprise, whether it be by ownership of or the power to vote a concentration of any class of voting securities, the ability to elect or appoint members of the board of directors or officers of the entity, or otherwise.

(f) *Public nature of proceedings.* As described in § 1780.6 of this part, all hearings shall be open to the public unless the Director in his discretion determines to the contrary based on public interest. The Director shall also make final orders available to the public, as well as modifications to or terminations thereof, except that the Director may determine in writing to delay public disclosure of such final orders for a reasonable time if immediate disclosure would seriously threaten the financial health or security of the Enterprise.

Dated: December 19, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NE-25-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW4000 series turbofan engines with 2nd stage high pressure turbine (HPT) air seal assembly part number (P/N) 50L976 or P/N 50L960 installed. This proposal would require operators to recalculate 2nd stage HPT air seal assembly cycles-in-service, based on flight hour-to-cycle ratio usage. This proposal would also require upon recalculation, initial and repetitive on-wing borescope inspections of 2nd stage HPT air seal assemblies for cracks based on the newly calculated service life. This proposal would also require the removal from service of any cracked seal assemblies, and the removal of seal assemblies at or before newly calculated service life limits. This proposal is prompted by reports that thirteen 2nd stage HPT air seal assemblies have been found cracked in the rim area. The actions specified by the proposed AD are intended to prevent 2nd stage HPT air seal assembly fracture that could result in an uncontained engine failure.

DATES: Comments must be received by February 26, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-NE-25-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8