

FEB 2

January 26, 2001

Freddie
Mac

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General Counsel
Office of Federal Housing Enterprise Oversight
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Re: Proposed Regulations Relating to the Annual Assessment Procedures
RIN 2550-AA15, 65 Fed. Reg. 81768 (Dec. 27, 2000)

Dear Mr. Pollard:

Freddie Mac respectfully submits its comments on the annual assessment regulations proposed by the Office of Federal Housing Enterprise Oversight ("OFHEO") on December 27, 2000. These regulations (the "Proposed Regulations") set forth policies and procedures relating to OFHEO's annual assessment of funds from Freddie Mac and Fannie Mae (the "Enterprises").

The Proposed Regulations largely codify existing policies and procedures, which have been informed to date by the requirements set forth in § 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the "1992 Act"). Some provisions of the Proposed Regulations also relate to matters for which there are no existing policies or procedures because the situations addressed have never occurred (e.g., the procedures relating to additional assessments of a less than adequately capitalized Enterprise set forth in § 1701.4 of the Proposed Regulations). Freddie Mac agrees that it is appropriate to codify and clarify such policies and procedures and believes that the Proposed Regulations, when finalized, will provide valuable guidance to minimize the likelihood of any misunderstandings or disputes concerning the annual assessment process. Mindful of the important objective of providing greater certainty, Freddie Mac offers the following comments.

Comments

1. Definition of Total Assets

Section 1701.2(f) of the Proposed Regulations appropriately defines "total assets" in terms consistent with the calculation methodology in OFHEO's minimum capital

regulations.¹ However, we note that OFHEO has indicated that it is considering making amendments to its minimum capital regulations and that such amendments could require OFHEO to make conforming amendments to the definition of total assets in § 1701.2 of the Proposed Regulations at the same time.²

To avoid the need to amend proposed § 1701.2(f) whenever the minimum capital regulations are amended, proposed § 1701.2(f) could be made "evergreen" by incorporating by reference the methodology applied under the minimum capital regulations. Accordingly, we recommend that OFHEO modify § 1701.2(f) to read as follows:

(f) Total assets means the sum, as of the preceding June 30, of the following amounts used to calculate the quarterly minimum capital requirement of the Enterprise under 12 C.F.R. part 1750, subpart A: (i) on-balance sheet assets; (ii) off-balance sheet mortgage-backed securities; and (iii) other off-balance sheet obligations (including commitments).

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2. Establishment of Assessment

Section 1701.3(a) of the Proposed Regulations sets forth the statutory right of the Director of OFHEO (the "Director") to collect annual assessments from the Enterprises. This proposed section closely follows the language of § 1316(a) of the 1992 Act, but paraphrases the limit on the amount of the annual assessment using language from a different portion of that statute.³ In order to be clearer, proposed § 1701.3(a) could more closely track the language of the relevant statutory provision. We recommend that OFHEO modify § 1701.3(a) by removing the second sentence of the proposed section and adding the following text highlighted in italics:

(a) Establishment of Assessment. The Director may, to the extent provided in appropriation acts, establish and collect from the Enterprises an annual assessment for each fiscal year, as allocated under paragraph (b) of this section, *in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of OFHEO, including the expenses of any examinations, under 12 U.S.C. § 4517.*

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¹ See 12 C.F.R. § 1750, subpart A.

² For example, the recent adoption of FAS 133 by the Financial Accounting Standards Board is likely to make changes to calculation of assets in the minimum capital regulations necessary or desirable.

³ The proposed section initially paraphrases a portion of § 1316(a) of the 1992 Act and then specifies a limit on the amount of such annual assessments by paraphrasing a portion of § 1316(f) of the 1992 Act. Because the latter statutory provision addresses permissible uses of collected funds by the Director, it is not necessarily applicable to define a limit for annual assessments. In contrast, a portion of § 1316(a) of the 1992 Act not codified in the Proposed Regulations does define a limit that relates directly to the Director's right to make an annual assessment. Notably, § 1316(a) uses different language to define a limit on annual assessments than § 1316(f) uses to specify permissible expenditures of collected assessments by the Director.

3. Timing of Payment

Section 1701.3(c)(1) of the Proposed Regulations specifies that semiannual payments are due on October 1 and April 1, "except as provided in paragraph (d) of this section and § 1701.4." However, neither § 1701.3(d) nor § 1701.4 contains any provision affecting the timing of semiannual payments. Accordingly, we recommend that OFHEO remove the references to these sections from § 1701.3(c)(1).

discuss

In contrast, § 1701.3(c)(2) does contain provisions with an impact on the timing of the semiannual payments, but it is not mentioned in § 1701.3(c)(1). Thus, we recommend that OFHEO modify § 1701.3(c)(1) to read as follows:

fix both parts

(c)(1) Timing of Payment. (1) *Except as described in paragraph (2) below*, each Enterprise shall pay one-half of its proportional share of the annual assessment in semiannual payments on or before October 1 and April 1 for each fiscal year.

is this issue if works?

4. Surplus Funds

Section 1701.3(d) of the Proposed Regulations tracks § 1316(d) of the 1992 Act in the treatment of unobligated funds remaining at the end of the year for which the funds were assessed. Both the statute and proposed § 1701.3(d) indicate that any such surplus be treated as a credit balance for the following year's assessment.⁴ Freddie Mac believes that OFHEO could add clarity to this provision by including an additional statement codifying the established procedure that surplus funds be credited to the first of the two semi-annual assessment installments.⁵ In addition, OFHEO could specify that, in instances when it determines that there was a surplus for the prior year after the first installment had been paid, it will immediately return such surplus to the Enterprises (*i.e.*, refund the overpayment of the first installment).⁶ Accordingly, OFHEO could modify § 1701.3(d) by adding the following text highlighted in italics:

would this ever happen?

(d) Surplus Funds. Surplus funds shall be credited to the *first semiannual payment of the assessment* by reducing the amount collected by the amount of the surplus funds. Surplus funds shall be allocated in the same proportion as

⁴ The 1992 Act and the Proposed Regulations use slightly different language to specify this treatment. The statute states, "If any amount from any annual assessment collected from an enterprise remains unobligated at the end of the year for which the assessment was collected, such amount shall be credited to the assessment to be collected from the enterprise for the following year." 1992 Act § 1316(d). The Proposed Regulations, in contrast, first define surplus funds as "the funds from any annual assessment collected from an Enterprise that are not obligated as of September 30 of each fiscal year," 12 C.F.R. § 1701.2(e) (proposed), and later indicate, "Surplus funds shall be credited to the annual assessment by reducing the amount collected by the amount of the surplus funds." *Id.* at § 1701.3(d).

⁵ For example, OFHEO reduced the amount of our first FY2001 semiannual payment by our share of the unexpended FY2000 funds.

⁶ By including this clarification, OFHEO avoids the need to establish rules regarding interest that would accrue until, and be deducted from, the due date of the next semiannual installment.

they were collected, except as determined by the Director. *If the amount of surplus funds cannot be determined by the time that the first semiannual payment is made (or any partial payment is made pursuant to the provisions of § 1701.3(c)(2)), OFHEO shall refund to the Enterprises any resulting overpayment of the first installment as soon as practicable after the amount of such surplus funds can be determined.*

would this also happen

5. Increased Payments for a Less Than Adequately Capitalized Enterprise

Section 1701.4 of the Proposed Regulations essentially mirrors § 1316(c) of the 1992 Act, which permits the Director to increase the semiannual payment collected from an Enterprise that is not classified as adequately capitalized to cover the additional costs of regulation. Again, we believe that the regulation could be clearer if it more closely tracked the statutory language on which it was based.⁷ Specifically, proposed § 1701.4 should also include the statutory provision that would guide the Director's discretion in increasing the assessment of a less than adequately capitalized Enterprise, as follows (additional text highlighted in italics):

§ 1701.4 Increase in semiannual payments.

The Director, in his or her discretion, may increase the semiannual payment to be collected under § 1701.3 from an Enterprise that is not classified as adequately capitalized *as necessary to pay additional estimated costs of regulation of the Enterprise.*

DWR had deleted

Note: No comment on appropriate status - compare w/ Freddie

Also, § 1701.4 of the Proposed Regulations is silent on how any surplus resulting from an increased semiannual payment would be allocated. Presumably, OFHEO intends that any such surplus be treated as described in § 1701.3(d) of the Proposed Regulations, and Freddie Mac believes that such treatment is appropriate.⁸ To clarify this treatment of any surplus, OFHEO could add the following sentence to the end of § 1701.4:

⁷ Section 1316(c) of the 1992 Act states, "The semiannual payments made pursuant to subsection (b) by any enterprise that is not classified (for purposes of subtitle B) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the enterprise."

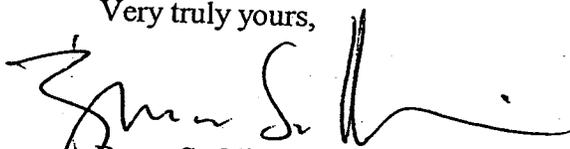
⁸ In most situations, a surplus resulting from an increased semiannual payment would be credited to the Enterprise that made such payment. However, under some circumstances the other Enterprise (*i.e.*, the adequately capitalized Enterprise, assuming that one of the two remains so capitalized) may be entitled to a portion of the surplus. For example, if OFHEO allocates some of its regular annual assessment funds to the additional costs of regulating the less than adequately capitalized Enterprise, equity considerations dictate that any surplus remaining from a § 1701.4 assessment increase be divided between the Enterprises. The procedures set forth in § 1701.3(d) of the Proposed Regulations should provide sufficient flexibility to permit the Director to make such an equitable adjustment, as necessary. However, Freddie Mac believes it important to clarify that allocation of any surplus resulting from a § 1701.4 assessment increase be governed by the provisions of § 1701.3(d).

Any surplus funds resulting from any such increase in semiannual payments shall be allocated to the Enterprises as described in § 1701.3(d). 014

Conclusion

We agree with the objective of clarifying the practices and procedures associated with the annual assessment of the Enterprises and appreciate the opportunity to assist OFHEO to achieve this objective. The current proposal furthers this objective, and we believe that OFHEO could additionally enhance the clarity of the Proposed Regulations and provide greater certainty concerning the annual assessment process by incorporating the recommendations set forth in this letter. Please call me at 703/903-3361 if you have any questions concerning our comments.

Very truly yours,



Bruce S. Oliver
Associate General Counsel