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Alfred M. Pollard
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Fourth Floor
1700 G Street, NW.
Washington, DC 20552

**Re: Comments of Fannie Mae on OFHEO's
Proposed Rule on Assessments, 12 CFR Part 1701**

Dear Mr. Pollard:

Fannie Mae respectfully submits these comments in response to the Office of Federal Housing Enterprise Oversight's ("OFHEO") Notice of Proposed Rulemaking setting forth its policy and procedures with respect to the annual assessment of Fannie Mae and Freddie Mac. We recognize that the proposed rule for the most part codifies the assessments process that OFHEO has employed since 1992 and applaud the agency's apparent desire not to dramatically change that process. We do, however, have some comments, both technical and substantive, regarding certain provisions of the proposed rule. Our comments are set forth below.

Definition of Adequately Capitalized (§1701.2(b))

As a technical matter, Fannie Mae suggests that OFHEO conform the text of the regulation to the explanation in the Section-by-Section analysis. Specifically, Fannie Mae suggests that OFHEO strike "for purposes of" and insert in its place "capital classification" so that the new text reads "Adequately capitalized means the adequately capitalized capital classification under section 1364 of the Act (12 U.S.C. 4614)." We believe this technical amendment will enhance the clarity of the regulatory text.

*OK to
make
change*

Definition of Enterprise (§1701.2)

We note that OFHEO has adopted the definition of Enterprise from the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("1992 Act") in the definition of Enterprise in the proposed rule. This definition does not, however, accommodate the references in other provisions of the rule to "Enterprise" meaning either Fannie Mae or Freddie Mac or "Enterprises" meaning both Fannie Mae and Freddie Mac. (See, e.g., §1701.3(b) "Each Enterprise shall pay..." and §1701.3(a) "establish and collect from the Enterprises," respectively.) Thus, we suggest that OFHEO redefine Enterprise to address

Fannie Mae and Freddie Mac individually and to add a definition for Enterprises to include Fannie Mae and Freddie Mac collectively.

We suggest OFHEO amend Section 1701.2 to read, in relevant part, as follows:

“(d) Enterprise means the Federal National Mortgage Association or the Federal Home Loan Mortgage Association.

“(e) Enterprises means collectively the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.”

*use this
OK to make
change*

Each of the successive paragraphs (e), (f), and (g) would need to be renumbered (f), (g), and (h), respectively, if OFHEO adopts the definitions as proposed above.

Definition of Total Assets (§1701.2(f))

OFHEO has stated in its Section-by-Section analysis that the assets used to calculate Total Assets for purposes of the annual assessment are the same as the assets used to calculate the minimum capital level of an Enterprise under 12 CFR Part 1750, subpart A. Fannie Mae appreciates and understands this process. We suggest, however, that the definition of Total Assets for purposes of calculating annual assessments incorporate by reference those assets used by OFHEO to calculate minimum capital levels in lieu of reciting the same assets in separate provisions of the regulation. Such incorporation by reference prevents confusion and promotes clarity. We believe that it will avoid the potential for inconsistent interpretation that may be caused by the description of the same assets in two separate places of OFHEO's regulations particularly if there are amendments made to either of the regulations in the future.

Moreover, the implementation of Financial Accounting Standard 133 (“FAS 133”) may cause an unintended double counting of assets used to determine Total Assets under the proposed definition. For example, under FAS 133 all derivatives will be “on-balance-sheet” and some of these will be assets. In paragraph (f)(1)(iv), OFHEO refers to interest rate contracts, which are derivatives and thus under FAS 133 would be considered on-balance-sheet. However, the proposed text of the regulation does not appear to take this into account and thus interest rate contracts would be counted both under paragraph (f)(1)(i) as “on-balance-sheet” assets and under (f)(1)(iv) where they are specifically referenced.

Thus, we suggest OFHEO amend Section 1701.2 to read, in relevant part, as follows:

“(f)(1) Total Assets means the sum..., of those assets used to calculate an Enterprise's minimum capital level pursuant to 12 CFR 1750.4 without the percentage of risk adjustments set forth in that section.”

*compare w/
Freddie's*

ask Bob

Allocation and Proportional Share (§1701.3(b))

Currently, OFHEO calculates the allocation of each Enterprise's assessment only once a year. Such assessment is based upon the proportion of each Enterprise's Total Assets to the combined Total Assets of both Enterprises as of the June quarterly minimum capital report of each Enterprise. Thereafter, each Enterprise pays its portion of the assessment in two installments. Although the 1992 Act requires that payment of the assessment be made a certain number of times per year (semiannually) (12 U.S.C. 4516(b)(2)), the 1992 Act does not require that the calculation of each Enterprise's portion occur any certain number of times per year. OFHEO calculates the allocation of each Enterprise's assessment only once a year.

Because the percentage of either Enterprise's Total Assets to the Total Assets of both Enterprises combined may vary during any year, we believe that it is more equitable to the Enterprise to have a subsequent recalculation of its proportional share of the assessment as of the December quarterly minimum capital report. Thus, the allocation of assessment made as of the June quarterly minimum capital report of each Enterprise may be used to allocate each Enterprise's proportional share of the assessment for purposes of the October 1 semiannual payment; and the allocation of assessment made as of the December quarterly minimum capital report of each Enterprise may be used to allocate each Enterprise's proportional share of the assessment for the April 1 semiannual payment.

*Need to
talk to Bob
+ Carl*

We suggest OFHEO amend Sections 1701.2 and 1701.3 to read, in relevant part, as follows:

In §1701.2(f)(1) strike "June quarterly minimum capital report" and replace it with "the most recent of either the June quarterly minimum capital report or the most recent December quarterly minimum capital report";

In §1701.2(f)(1)(i), strike "in the June quarterly minimum capital report" and replace it with "in either the most recent June quarterly minimum capital report or the most recent December quarterly minimum capital report"; and

In §1701.3(b), at the end of the paragraph, add "For purposes of calculating the proportional share of each Enterprise for the semiannual payment due on or before October 1, the Total Assets of each Enterprise shall be calculated using the June quarterly minimum capital report, and for purposes of calculating the proportional share of each Enterprise for the semiannual payment due on or before April 1, the Total Assets of each

Enterprise shall be calculated using December minimum capital report of each Enterprise."

Increase in Semiannual Payments (§1701.4)

Subject to three conditions, the 1992 Act permits the Director of OFHEO discretion to increase the semiannual payment of an Enterprise. The first condition is that the Enterprise is not classified for purposes of subtitle B of the 1992 Act (12 USCS §§ 4611 et seq.) as adequately capitalized. The second is that such increase may be made only "as necessary" due to increased costs of regulation of an Enterprise that is not adequately capitalized. The third is that such increase may be in only an amount equal to the additional estimated costs of regulation of the Enterprise. 12 U.S.C. § 4516(c). Although the proposed regulation appears to take into consideration the first of these conditions, it fails to address the second and third conditions. Because these are statutory prerequisites to the ability of the Director of OFHEO to exercise discretionary authority, they should be included in the regulatory provision.

We suggest OFHEO amend Section 1701.4 to read, in relevant part, as follows:

At the end of section 1701.4, strike the "." replace it with a "," and add "as necessary due to the increased cost of regulation of the Enterprise. The amount of any discretionary increase in semiannual payment to be collected from an Enterprise that is not classified as adequately capitalized shall be limited to the estimated additional costs of regulation of the Enterprise."

*Case to then
similar comment
as Freddie
compare*

Notice and Review (§1701.5)

In connection with the proposed Notice and Review provision, we have some comments and suggested changes to the text of the proposed regulation in connection with notice of semiannual payments, notice of change in assessments procedure, and the timing of the Director's determination of a request for review.

Advance Notice of Semiannual Payments. The proposed rule requires that the Director provide written notice of the assessment, the semiannual payments, and any partial payments to be collected to each Enterprise. We request that actual notice of any semiannual payment be made at least five business days prior to the due date. Such advance notice is necessary so that Fannie Mae may take appropriate steps to review the calculation, process the notice of payment, and make the payment in a timely fashion.

check w/ back

We suggest OFHEO amend Section 1701.5(a) to read, in relevant part, as follows:

In 1701.5(a) after the first sentence insert a new sentence,

*need put in
discretion preamble*

“Any written notice advising of any semiannual payments to be collected under this part shall be provided to each Enterprise not less than five business days prior to the date such payment is due and owing to OFHEO.”

Notice of Change in Assessments Procedure. The proposed rule requires the Director to provide written notice to the Enterprises of any changes in the assessments procedure. The intent and purpose of the proposed regulatory text is unclear to us, and the section-by-section analysis provides no guidance as it does not address this provision at all. Any proposed changes in procedures that would alter this rule or have any effect on the Enterprises would be required to go through the notice and comment rulemaking process under the Administrative Procedures Act (“APA”). To the extent that any such changes are not subject to APA notice and comment rulemaking, the notice proposed in this rule should be given at least 30 days in advance of the implementation of any changes in order to allow us an opportunity review and understand, prepare for, and respond to them.

*disagree with
APA process
discuss*

We suggest OFHEO amend Section 1701.5(a) to read, in relevant part, as follows:

In the currently proposed second sentence (which becomes the third sentence if OFHEO adopts the immediately preceding suggestion), strike “with” and replace it with “at least 30 days prior” before “written notice”.

Timing of the Director’s Determination. In section 1701.5(b), the proposed text of the regulation does not provide any time period within which the Director must make a determination whether (1) not to review an Enterprise’s written request for review of a calculation, or (2) review such request and take appropriate action. Without a time period within which action is required, an Enterprise could effectively be denied a final agency action. In order to promote efficient and effective assessments, and in fairness to the Enterprises, we believe that the Director should make the determination within 60 days from an Enterprise’s request.

reject

We suggest OFHEO amend Section 1701.5(b) to read, in relevant part, as follows:

After the first sentence, insert a new sentence

“The Director shall make such determination within 60 days of an Enterprise’s written request.”

disagree

Delinquent Payments (§1701.6)

The regulation could be more specific concerning the assessment of interest in connection with delinquent payments. In particular, Fannie Mae would appreciate greater specificity regarding both the rate that OFHEO would charge Fannie Mae and the process of applying that rate. We have reviewed the OCC’s regulations and believe that they

disagree

provide the requisite level of detail for assessment of interest in the event of a delinquent payment of an assessment. The OCC's regulations provide:

Interest on delinquent payments, ... will be assessed beginning the first calendar day on which payment is considered delinquent, and on each calendar day thereafter up to and including the day payment is received. Interest will be simple interest, calculated for each day payment is delinquent by multiplying the daily equivalent of the applicable interest rate by the amount delinquent. The rate of interest will be the United States Treasury Department's current value of funds rate (the "TFRM rate"); that rate is issued under the Treasury Fiscal Requirements Manual and is published quarterly in the Federal Register.

*in accordance
w/ Treas. Manual*

12 CFR §8.7(c).

We believe that incorporating similar language into this regulation provides greater clarity to the process and to the calculation of interest that would be assessed. Thus, we suggest OFHEO amend Section 1701.6 to read, in relevant part, as follows:

(a) The Director may assess interest and penalties on delinquent semiannual or partial payments collected under this Part in accordance with 31 U.S.C. 3717 and 12 CFR part 1704 (debt collection). Semiannual or partial payments are considered delinquent if they are received after the date specified in the notice required in Section 1701.5(a). Interest on delinquent semiannual or partial payments will be assessed beginning the first calendar day on which payment is considered delinquent, and on each calendar day thereafter up to and including the day payment is received. Interest will be simple interest, calculated for each day payment is delinquent by multiplying the daily equivalent of the applicable interest rate by the amount delinquent. The rate of interest will be the United States Treasury Department's current value of funds rate (the "TFRM rate"); that rate is issued under the Treasury Fiscal Requirements Manual and is published quarterly in the Federal Register.

* * *

We thank OFHEO for its attention to our comments on the proposed assessments rule. We would be pleased to discuss with you any of these comments.

Sincerely,

