

of commitments outstanding each quarter over the preceding four quarters, (2) multifamily credit enhancements will require capital equal to 0.45 percent of the unpaid principal balance, and (3) sold portfolio remittances pending will require capital equal to 0.45 percent of the dollar amount.²³ Any individual interest rate and foreign exchange rate contract or group of contracts subject to a recognized netting agreement will require capital equal to 3.00 percent of the CEA, except to the extent that the Enterprises hold qualifying collateral. The portion of the CEA equal to the market value of the collateral for that contract or group of contracts will equal 1.50 percent.

Minimum Capital Report

The proposed regulation requires that each Enterprise file with the Director of OFHEO a minimum capital report each quarter or at other times, as required by the Director. The report will contain the information required by OFHEO in written instructions to the Enterprise, including, but not limited to, an estimate of the minimum capital level and an estimate of core capital coverage or shortfall relative to the estimated minimum capital level. The proposed regulation provides the Director flexibility to determine the specific items to be included in the minimum capital report. The proposed regulation also addresses the timing, certification, and amendment of the report. The information provided by each Enterprise in the minimum capital report will be used by OFHEO in determining the capital classification of the Enterprise.

Notice of Capital Classification

Section 1368 of the Act²⁴ requires OFHEO to provide the Enterprises with notice of, and an opportunity to comment on, the proposed minimum capital classification. This proposed regulation provides that before OFHEO determines the capital classification of an Enterprise, OFHEO will provide the Enterprise with written notice of the proposed classification and a 30-day period during which each Enterprise may submit its views regarding the classification. The proposed regulation provides that OFHEO may extend the period for up to 30 days and may shorten the period to less than 30 days if the Director determines that the condition of an Enterprise so warrants. Following the expiration of the response

period, OFHEO will take into consideration any comments received from an Enterprise prior to issuing the final notice of capital classification.

Regulatory Impact

Executive Order 12606, The Family

This proposed regulation does not have potential for significant impact on family formulation, maintenance, and general well-being, and thus, is not subject to review under Executive Order 12606.

Executive Order 12612, Federalism

This proposed regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12866, Regulatory Planning and Review

This proposed regulation has been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

Unfunded Mandates Reform Act of 1995

This proposed regulation 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, this proposed regulation does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

This proposed regulation will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed regulation contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 1750

Minimum capital, capital classifications.

Accordingly, for the reasons set forth in the preamble, OFHEO proposes to amend Chapter XVII of Title 12 of the Code of Federal Regulations by adding Part 1750 to read as follows:

PART 1750—CAPITAL

Subpart A—Minimum Capital

Sec.

- 1750.1 General.
- 1750.2 Definition.
- 1750.3 Procedure and timing.
- 1750.4 Minimum capital level computation.
- 1750.5 Notice of capital classification.

Appendix A to Subpart A of Part 1750—Minimum Capital Level Components for Interest Rate and Foreign Exchange Rate Contracts

Subpart B—[Reserved]

Authority: 12 U.S.C. 4513, 4514, 4612, 4614, 4618.

Subpart A—Minimum Capital

§ 1750.1 General.

The regulation contained in this Subpart A establishes the minimum capital requirements for each Enterprise. The board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and in excess of the minimum capital level contained in this Subpart A.

§ 1750.2 Definitions.

For purposes of this Subpart A, the following definitions shall apply.

Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, found at Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, 12 U.S.C. 4501 *et seq.*

Affiliate means any entity that controls, is controlled by, or is under common control with, an Enterprise, except as otherwise provided by the Director.

Commitment means any contractual, legally binding arrangement that obligates an Enterprise to purchase mortgages for portfolio or securitization.

Core Capital (1) means the sum of—

- (i) the par or stated value of outstanding common stock,
 - (ii) the par or stated value of perpetual, noncumulative preferred stock,
 - (iii) paid-in capital, and
 - (iv) retained earnings; and
- (2) Does not include any amounts the Enterprise could be required to pay at the option of an investor to retire capital or debt instruments.

Director means the Director of OFHEO.

Enterprise means the Federal National Mortgage Association and any affiliate thereof or the Federal Home Loan

²³ Freddie Mac accounts for these funds held by seller-servicers in custodial accounts separately from MBS until principal payments are passed on to MBS investors. Fannie Mae includes these custodial accounts in its MBS accounts.

²⁴ 12 U.S.C. 4618.