

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1405

RIN 0560-AG69

#### Disqualification for Crop Insurance Fraud

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule implements statutory provisions which render a producer ineligible for certain benefits if that person is found to be engaged in crop insurance fraud.

**DATES:** Comments must be received on or before November 12, 2002 to be assured of consideration.

**ADDRESS:** Comments should be directed to, Sandy Bryant, Branch Chief, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250-0517, telephone (202) 720-4380.

**FOR FURTHER INFORMATION CONTACT:** Sandy Bryant, (202) 720-4380.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This proposed rule was reviewed in conformance with Executive Order 12866, has been determined to be not significant, and therefore has not been reviewed by the Office of Management and Budget.

##### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule.

##### Environmental Evaluation

An environmental evaluation was performed and determined that this rule will not impact the quality of the human environment. Thus, the Agency is not required to prepare an environmental

assessment or Environmental Impact Statement.

##### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This final rule preempts any State law that is inconsistent with its provisions. Before any legal action may be brought concerning this rule, all administrative remedies provided must be exhausted.

##### Executive Order 12372

Executive Order 12372 requires consultation by Federal Agencies with State and local officials when providing funds or assistance that may require non-Federal input. The programs affected by this rule were excluded from the scope of this Executive Order in the Notice related to 7 CFR part 3015 published at 48 FR 29115 on June 24, 1983.

##### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates as defined in Title II of the Unfunded Mandates Reform Act of 1995 (UMRA). Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

##### Paperwork Reduction Act

This rule has no effect on the information collection requirements of the Agency.

##### Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

##### Background

###### *Producer Disqualification*

This proposed rule implements section 121(a) of the Agricultural Risk Protection Act of 2000 (ARPA) (Pub. L. 106-224), signed June 20, 2000. ARPA amended section 515(h)(3)(B) of the Federal Crop Insurance Act (7 U.S.C. 1514) to provide that a producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit produced under each of the following:

- ARPA (Pub. L. 106-224).

- The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including Noninsured Crop Disaster Assistance Program under section 196 of that act (7 U.S.C. 7333).

- The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).
- The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).
- The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).
- Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).
- The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).
- Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities.

ARPA provided that the disqualification of the program participant was at the discretion of the Secretary of Agriculture based on the gravity of the violation, the type and amount of the sanction to be imposed.

Covered benefits under the statute include crop insurance benefits administered by the Federal Crop Insurance Corporation (FCIC). FCIC will make the basic finding of violation and thus the basic disqualification decision. This rule simply provides for applying the disqualification to programs either administered by the Department of Agriculture's Farm Service Agency or conducted using funds of the Commodity Credit Corporation. The period of disqualification would automatically be that found right by FCIC for its own program. This will allow for consistent results between agencies and allowed for one hearing process to resolve all issues.

##### List of Subjects in 7 CFR Part 1405

Loan Programs—agricultural, Price support programs.

Accordingly, it is proposed that 7 CFR part 1405 be amended as follows:

##### PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for part 1405 continues to read as follows:

**Authority:** 15 U.S.C. 714b and 714c.

2. Part 1405 is amended by adding § 1405.7 to read as follows:

##### § 1405.7 Disqualification due to Federal Crop Insurance fraud.

(a) Section 1515(h) of the Federal Crop Insurance Act (FCIA) provides that

a person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 1515 (h)(3). In section 1515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

- (1) Title V of the FCIA.
- (2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the noninsured crop disaster assistance producer under section 196 of that Act (7 U.S.C. 7333).
- (3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).
- (4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).
- (5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).
- (6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).
- (7) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations in this connection are made by FCIC. However, upon notice from FCIC to the Commodity Credit Corporation (CCC) that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person shall be considered ineligible for payments administered by the Farm Service Agency (FSA) or made using Commodity Credit Corporation funds for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

Signed in Washington, DC, on September 3, 2002.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

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**BILLING CODE 3410-05-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 12 CFR Part 1750

**RIN 2550-AA26**

#### Office of Federal Housing Enterprise Oversight; Risk-Based Capital

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing to make technical and correcting amendments to Appendix A to Subpart B of 12 CFR Part 1750 Risk-Based Capital. The proposed amendments are intended to enhance the accuracy of the calculation of the risk-based capital requirement for the Enterprises.

**DATES:** Comments regarding this Notice of Proposed Rulemaking must be received in writing on or before September 23, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Robert Pomeranz, Senior Accounting Specialist, Office of Risk Analysis and Model Development, telephone (202) 414-3796 or Jamie Schwing, Associate General Counsel, telephone (202) 414-3787 (not toll free numbers), 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:

##### Background

OFHEO published a final regulation setting forth a risk-based capital stress test on September 13, 2001, 12 CFR part 1750 (the Rule), which formed the basis for determining the risk-based capital requirement for the federally sponsored housing enterprises-Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).<sup>1</sup>

This document proposes to make minor technical corrections to the Rule and to update the treatment of Financial Accounting Standard 133 (FAS 133)<sup>2</sup> in the Rule. These changes relate to:

- (1) Capital classification, which would be updated to cross reference to the Prompt Supervisory Response and

Corrective Action regulation, 12 CFR part 1777;

(2) Out-of-date third party sources of information related to interest rate indexes (e.g. 30-year CMT, Bloomberg Tickers), which would be updated to reflect currently available indexes. Specifically, the 30-year constant maturity yield is no longer reported by the Federal Reserve in the H.15 Release. In its place, the U.S. Treasury Department has developed a methodology using its "Long-Term Average Rate" and "Extrapolation Factors" designed to generate a substitute for the 30-year CMT yield series discontinued in February 2002. Similarly, the Bloomberg tickers for the Federal Agency Cost of Funds would be updated. Table 3-18 would be amended to reflect these changes;

(3) Credit Ratings in Table 3-30, which would be updated to include certain credit ratings used in the marketplace that were not listed in the original table. Specifically, Moody assigns an additional rating from VMIG1 through VMIG3 to quantify the risks of the demand feature, and Standard & Poor's rates short term issuances as SP-1+, SP-1, SP-2, and SP-3;

(4) Paragraph 3.6.3.4.3.1[a]3.a on single family default and prepayment explanatory variables, which would be replaced in full, including equations, to correct the parenthetical ( $q = -7, -6, \dots, 0, 1, \dots, 40$ );

(5) Table 3-35, in which the explanatory variable categories for Relative Spread (RS<sub>q</sub>) in the explanatory variable column were identified incorrectly;

(6) The equation related to mortgage credit enhancement procedures at paragraph 3.6.3.6.4.3, which would be corrected to reflect the fact that in extreme circumstances (*i.e.*, when defaults are zero), an equation in section 3.6.3.6.4.3 Mortgage Credit Enhancement Procedures produces "divide by zero" errors in the computer code;

(7) Table 3-56 and 3-57, with respect to the definition for "unamortized balance" for the RBC input for single class MBS cash flows;

(8) Table 3-59, which incorrectly reported values for the weighted average Original LTV, rather than the weighted average Amortized Original LTV (AOLTV) of the combined Enterprise portfolios by Original LTV category, as of 2Q2000. Also, the specific amounts would be removed from column 2 and column 3 of the table, because OFHEO plans to update this table annually. A footnote to the table notes that this information will be updated according

<sup>1</sup> Risk-based Capital, 66 FR 47730 (September 13, 2001), 12 CFR part 1750, *as amended*, 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002).

<sup>2</sup> Financial Accounting Standards Board Statement of Financial Accounting Standard 133, "Accounting for Derivative Instruments and Hedging Activities," June 1998.