Rules and Regulations

Federal Register
Vol. 70, No. 65
Wednesday, April 6, 2005

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550–AA24

Corporate Governance

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final amendments.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing amendments to its corporate governance regulation establishing corporate governance standards applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in order to further promote the safety and soundness of their operations.

DATES: Effective June 6, 2005.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790 (not a toll-free number); 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

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*) established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises or government sponsored enterprises) are adequately capitalized and operate safely and soundly in compliance with applicable laws, rules, and regulations.

In furtherance of its supervisory responsibilities, in 2002, OFHEO published a final corporate governance regulation, taking into consideration comments filed in response to an earlier proposed regulation.[1] The corporate governance regulation sets forth standards with respect to corporate governance practices and procedures of the Enterprises. It establishes a framework for corporate governance addressing applicable law, requirements and responsibilities of the board of directors and board committees, conflict-of-interest standards, and indemnification. As a result of findings and recommendations contained in the *Report of the Special Examination of Freddie Mac*[2] *(Report of Special Examination),* and based on the experience of OFHEO supervising the activities of the Enterprises, as well as developments in law, OFHEO is amending the corporate governance regulation within this framework.

On June 7, 2003, the Director of OFHEO ordered a special examination of the events leading to the public announcement by Freddie Mac of an audit of prior year financial statements and the termination, resignation, and retirement of three principal executive officers of Freddie Mac. The *Report of Special Examination* found that ''[t]he accounting and management problems of Freddie Mac were largely the product of a corporate culture that demanded steady but rapid growth in profits and focused on management of credit and interest rate risks but neglected key elements of the infrastructure of the enterprise needed to support growth.''[3] The *Report of Special Examination,* among other things, made specific recommendations with respect to practices in corporate governance that Freddie Mac should follow and that OFHEO should require.[4] For example, included are recommendations that functions of the chief executive officer and the chairperson of the board of directors should be separated; board members should become more actively involved in the oversight of the Enterprise; adequate and appropriate information should be provided to the board of directors; financial incentives for board members, executive officers, and employees should be developed based on long-term goals, not short-term earnings; strict term limits should be placed on board members; firms that audit the Enterprises, not merely the audit partners, should be changed periodically; and formal compliance and risk management programs should be established. A Consent Order, issued by OFHEO to Freddie Mac on December 9, 2003, required Freddie Mac to implement certain corporate governance practices that were recommended in the *Report of Special Examination,* as well as other remedial steps.[5]

Through ongoing oversight and supervision of both Enterprises and its special examinations, OFHEO has gained insights as to the need for enhancements or adjustments in the existing corporate governance standards for both Enterprises. Thus, OFHEO proposed to add prudential requirements to its corporate governance regulation that would have general applicability consistent with the practices recommended or required by the *Report of Special Examination* or the Consent Order.

OFHEO also notes that the Enterprises are privately owned but federally chartered companies. Created by Congress to facilitate liquidity and stability in mortgage markets and to advance affordable housing, they receive in exchange special benefits from their Government sponsorship which makes them unlike many other large financial institutions in some significant respects. Since their creation, the Enterprises have grown to become two of the largest and highly leveraged financial companies in the world in terms of assets, and together they control a majority share of the secondary market for conforming mortgages. Yet they are relatively small in terms of their total numbers of employees, and have a unique board

[1] 12 CFR Part 1710, 67 FR 38361 (June 4, 2002).

[2] OFHEO, *Report of the Special Examination of Freddie Mac (Dec.* 2003) (Report of Special Examination), which may be found at *http://www.ofheo.gov/media/pdf/specialreport122003.pdf.*

[3] *Id.,* at 4 (footnote omitted).

[4] *Id.,* at 163–171.

[5] OFHEO Order No. 2003–02, ''Consent Order, In the Matter of the Federal Home Loan Mortgage Corporation'' (Dec. 9, 2003) (Consent Order), which may be found at *http://www.ofheo.gov/media/pdf/consentorder12903.pdf.*

structure, public mission and regulatory framework. In addition, due to their Government sponsorship, the Enterprises are not as susceptible to some forms of market and management discipline. These distinctive characteristics also played a large part in the determination that Fannie Mae and Freddie Mac should adhere to certain policies that may not be applicable to other companies.

With respect to other developments, the New York Stock Exchange(NYSE) issued amendments to its corporate governance rules that are applicable to companies listed on the NYSE, including the listed Enterprises.[6] In addition, Congress passed the Sarbanes-Oxley Act of 2002 (SOA),[7] which contains corporate governance requirements, and the U.S. Securities and Exchange Commission (Commission) issued regulations to implement the SOA. Fannie Mae voluntarily registered its common stock with the Commission effective March 31, 2003; Freddie Mac announced its intention to register.[8]

Since registration, Fannie Mae files periodic financial disclosures with the Commission as required by the Securities Exchange Act of 1934 and is subject to the requirements of the SOA and implementing rules and regulations of the Commission.[9] Upon registration, Freddie Mac will be subject to the same requirements. To help meet its statutory responsibilities, OFHEO intends to ensure that such requirements and implementing rules and regulations are or remain applicable to the Enterprises even if Freddie Mac does not register with the Commission or if one or both Enterprises deregister. In connection with any conduct regulated by the Commission, OFHEO would look to any rules, regulations, and interpretations issued by the Commission and its requirements. OFHEO may initiate an enforcement action in the area of Enterprise corporate governance in response to a violation of its corporate governance regulation, including behavior that violates laws or requirements set forth therein.

Comments Received

The proposed amendments were published on April 12, 2004 (69 FR 19126). OFHEO received comments from 19 commenters as follows: (1) An individual shareholder of an Enterprise; (2) an individual; (3) Ernst & Young, an accounting firm; (4) America's Community Bankers, a trade association representing community banks; (5) National Association of Corporate Directors, an educational, publishing, and research organization on board leadership and a membership association for boards, directors, director candidates, and board advisers; (6) PriceWaterhouseCoopers, an accounting firm; (7) Business Roundtable, an association of chief executive officers of corporations; (8) Chamber of Commerce, a business federation; (9) American Institute of Certified Public Accountants, a professional association of certified public accountants; (10) KPMG, an accounting firm; (11) Deloitte & Touche, an accounting firm; (12) Freddie Mac; (13) Consumer Mortgage Coalition, a trade association of national mortgage lenders, servicers, and service providers; (14) an individual, Dean's Professor of Financial Regulatory Policy, University of Massachusetts-Amherst; (15) Nominating and Corporate Governance Committee of Fannie Mae; (16) FM Policy Focus, a coalition of six financial services and housing related trade associations; (17) Independent Community Bankers of America, a trade association of community banks; (18) Mortgage Insurance Companies of America, a trade association representing the private mortgage insurance industry; and, (19) Fannie Mae.

Response to Comments

Board of Directors (§ 1710.11)

OFHEO proposed a section that would add requirements and consolidate existing requirements relating to the board of directors of an Enterprise. OFHEO carefully considered the comments provided.

Separate Chairperson/Chief Executive Officer (§ 1710.11(a)(1))

One provision would require an Enterprise to prohibit the chairperson of the board from also serving as chief executive officer of the Enterprise. Often drawing on the experience and circumstances of non-government sponsored companies, many commenters urged that OFHEO leave this matter to the determination of the board of directors or suggested that a separate chairperson and chief executive officer is not in the best interests of the shareholders. The commenters who urged such a result did not focus on the impact of the unique characteristics of the Enterprises, such as their size, public mission, insulation from full market discipline and distinct board structure—characteristics that counsel against the concentration of power in a single chairperson/chief executive officer. Likewise, commenters did not make a substantial case for disregarding the lessons learned in the special examination of Freddie Mac about the risks of consolidating the chairperson and chief executive officer positions.

OFHEO believes that separating the functions of chairperson and chief executive officer is prudent for safe and sound operations of the Enterprises because it strengthens board independence and oversight of management on behalf of shareholders consistent with the public mission of the Enterprises. Separating the role of chief executive officer would similarly clarify the role and responsibility of the individual charged with leading each Enterprise's management team.[10] OFHEO recognizes that this is a different standard than is required of many other private corporations but it is appropriate for the Enterprises not only because of their government sponsorship, but also in light of the recent experience at Freddie Mac and the experience of OFHEO supervising both Enterprises. In the case of Freddie Mac, an earlier separation of the two roles could have caused the board to provide stronger independent guidance to management and identify problems sooner. OFHEO believes that a separation of the chairperson and the

[6] Final NYSE Corporate Governance Rules (Nov. 4, 2003), Section 303A. The NYSE final Corporate Governance Rules may be found at *http://www.nyse.com.* Note that except for final NYSE rule Section 303A.08, which became effective June 30, 2003, listed companies have until the earlier of their first annual meeting after January 15, 2004, or October 31, 2004, to comply with the new rules. The Enterprises are companies listed on the NYSE. As listed companies, the rules of the NYSE, including those addressing corporate governance, are applicable to the Enterprises.

[7] Pub. L. 107–204 (Jul. 30, 2002).

[8] See *http://www.fanniemae.com/ir/sec/index.jtml?s=SEC+filings* for Fannie Mae and *http://www.freddiemac.com/news/archives/investors/2003/restatement_112103.html* for Freddie Mac.

[9] The existing corporate governance regulation provides that the corporate governance practices and procedures of an Enterprise must comply with its respective chartering act and *other Federal law, rules, and regulations,* and that the practices and procedures must be consistent with the safe and sound operations of the Enterprise. 12 CFR 1710.10(a), 67 FR 38361, 38370 (Jun. 4, 2002).

[10] *See Report of Special Examination, supra* note 2, at 164. The concept of a non-executive chairman has support in recent discussions on improvements to corporate governance. For example, see General Accounting Office, Testimony of Comptroller General Walker before Senate Banking Committee, *Government-Sponsored Enterprises: A Framework for Strengthening GSE Governance and Oversight,* GAO–04–269T (February 10, 2004) (calling for separation of Chairman and CEO positions at Fannie Mae and Freddie Mac).

chief executive officer functions would enhance the effectiveness of changes being proposed in requirements for the boards of directors to meet their obligations and would promote the public interest in the safety and soundness of the Enterprises. Comments that this would limit the flexibility of the board to structure the company or limit corporate flexibility in general do not overcome the concern that OFHEO expressed for the benefits resulting from greater independence of the board and stronger oversight of these government sponsored enterprises.

OFHEO notes with approval that each Enterprise has now formally agreed to separate the positions of chairperson of the board and chief executive officer. Accordingly, the provision is not included in the final regulation at this time.

Term and Age Limits (§ 1710.11(a)(2))

A requirement that would limit the service of a board member to no more than 10 years or past the age of 72, whichever comes first, was proposed by OFHEO. One commenter approved of the limits, some commenters disapproved of the limits as undermining board leadership, and other commenters recommended transition periods or the ability to seek a waiver. Another commenter requested clarification that the age and term limits be applied as of the date of the meeting of the shareholders.

OFHEO found that a limit on years of service and age for the board members promotes an appropriate level of functioning of the board, strengthens the diversity and expertise of the board, and enhances its ability to respond to the unique, but constantly evolving business environment in which each Enterprise operates.[11] Overall, OFHEO determined that the potential loss of familiarity with the company and the possibility of having an experienced board member leave due to a fixed term based on age or years of service were outweighed by the experience of OFHEO supervising both Enterprises and the possibility of an entrenched board's failing to oversee adequately the company.

In response to comments, OFHEO is making changes to the provision to clarify that a board member who meets the age and term limits as of the date of his or her election or appointment may serve his or her full term. In addition, express language has been added to provide for a waiver by the Director, for good cause consistent with the supervisory responsibilities of OFHEO.

Independence of Board Members (§ 1710.11(a)(3))

OFHEO proposed that a majority of the seated board members of an Enterprise be independent under the rules of the NYSE.[12] OFHEO makes no distinction between those board members who are elected by shareholders and those who are appointed by the President. Thus, if one or more vacancies exist on a board among either elected or appointed shareholders, a majority of seated board members is required.

One commenter recommended that OFHEO should supplement the NYSE standards with additional standards. OFHEO determined that the NYSE rule appropriately covers what constitutes independence. As expressly provided by proposed § 1710.30, discussed below, OFHEO has the authority to provide for a different definition of the term ''independent board member'' or to provide additional guidance covering general or specific circumstances, if necessary in light of the special characteristics of the two Enterprises, including but not limited to circumstances where a board member has prior affiliation with an accounting firm currently serving as auditor of the Enterprise.

Another commenter recommended that the independence standard apply to all board members. Section 1710.11(a)(3), as proposed, does not differentiate between elected and presidentially-appointed board members. It was also requested that the provision reflect that the NYSE rules apply as changed from time to time by the NYSE. A technical revision has been made to the provision expressly to address this point. Finally, one commenter recommended that the term ''seated'' be defined. The term is intended to encompass those elected or appointed board members who serve on the board; OFHEO, however, does not believe it useful at this time to define further the term in the regulation.

Frequency of Meetings (§ 1710.11(b)(1))

The proposal would require that the board of directors of an Enterprise meet at least twice a quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines. One commenter supported the frequency requirement while another commenter suggested that this requirement amounts to micromanagement of the Enterprises. Other commenters suggested that requiring eight meetings a year, with at least one each calendar quarter was more appropriate. Another commenter suggested that the number of meetings be set in the aggregate, but the board be permitted to schedule meetings in such quarters as the board would determine. OFHEO determined that the number of meetings is reasonable and that spreading them over the course of the fiscal year is prudent.

Given the special nature of the Enterprises and the oversight required, OFHEO disagrees that the frequency requirement amounts to micromanagement or that requiring eight meetings a year is inappropriate. Meetings must be frequent enough to ensure that the board of directors can exercise adequate oversight of management. OFHEO determined in its review of Freddie Mac that the meetings of the board of directors were too infrequent to address the issues presented by the company, given its status, size, and complexity. OFHEO determined that to provide flexibility and to avoid practical issues such as requests for waivers and related procedural matters, the proposal would be adopted with the deletion of the requirement that two meetings occur per quarter. OFHEO has determined that the board of directors should meet no less than eight times a year and no less than once a calendar quarter.

Non-Management Board Meetings, Quorum of Board of Directors, Proxies (§ 1710.11(b)(2) and (3))

OFHEO received supporting comments on the provisions of § 1710.11(b)(2) and (3) and has issued them without change. The provisions require that the non-management directors of an Enterprise meet at regularly scheduled executive sessions without management participation in order to promote open discussion.[13] They also consolidate without substantive change the existing requirements of the current OFHEO corporate governance regulation with respect to the constitution of a quorum of the board of directors and the prohibition against a board member voting by proxy.

Information (§ 1710.11(b)(4))

As proposed, § 1710.11(b)(4) would require that management of an Enterprise provide board members with information that is adequate and appropriate considering what a

[11] *Report of Special Examination, supra* note 2, at 166. An age limit and term limit will work well in tandem and have been part of Enterprise bylaws in one form or another.

[12] Final NYSE rule Section 303A.

[13] For reference, see final NYSE rule Section 303A.03.

reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations to the Enterprise.[14] One commenter supported this requirement, while another recommended that it be limited to that information consistent with the requirements of the selected corporate governance law of the Enterprise. It would not be useful to limit information required by the selected corporate governance law because, unlike board members of state-chartered corporations, board members of the Enterprises have specific obligations set forth in the corporate governance regulation that may require additional information to fulfill such obligations. Therefore, OFHEO has determined not to limit the provision as requested and is adopting the provision as proposed.

Annual Review (§ 1710.11(b)(5))

The proposal would require, at least annually, that the Enterprise board of directors review requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties, with appropriate professional assistance.[15] One commenter recommended that the annual review be expanded to include an annual review of the effectiveness of the corporate governance system. OFHEO has determined not to adopt that recommendation in the context of review of the Enterprise board of director activities and duties. The provision is being adopted as proposed.

Committees of Board of Directors (§ 1710.12)

OFHEO proposed to add a requirement to § 1710.11, redesignated as § 1710.12, that a committee of the board of directors of an Enterprise meet as frequently as necessary to carry out its obligations and duties and to exercise adequate oversight of management.[16]

The current corporate governance regulation requires that an Enterprise establish audit and compensation committees of the board of directors. OFHEO proposed to add a requirement that an Enterprise establish a nominating/corporate governance committee consistent with appropriate application of the final NYSE rules[17] and that the committees of the board of directors comply with NYSE rules.[18] The NYSE rules address, among other things, the independence of audit committee members; the responsibility of the audit committee to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and, funding for the independent auditor and any outside advisors engaged by the audit committee.

As proposed, the amended section also would require that Enterprise audit committees comply with the requirements set forth in section 301 of the SOA, which address, among other things, audit committee responsibilities, independence, establishment of complaint procedures, and authority to engage advisers, as well as adequate funding of the committee. The reference to the SOA and the final NYSE rules would not restrict the authority of OFHEO to mandate additional requirements appropriate to the Enterprises'' situations and their oversight, as provided under § 1710.30.

OFHEO received one comment on this section that recommended that the provision should be made co-extensive with the corresponding NYSE rules issued pursuant to the SOA, which are incorporated by reference, as those rules may be interpreted or changed from time to time by the responsible bodies. OFHEO has determined that the section, as proposed, has incorporated by reference the appropriate NYSE and SOA section and that, as appropriate, OFHEO would look to the NYSE interpretation of the NYSE rules in determining whether an Enterprise was in compliance with this section. OFHEO has determined that it is unnecessary to state this in the section and § 1710.12 is adopted as proposed.

Compensation of Board Members, Executive Officers, and Employees (§ 1710.13)

OFHEO proposed to amend § 1710.12, redesignated as § 1710.13, by adding language that would prohibit compensation in excess of what is appropriate for these government sponsored enterprises, in addition to what is reasonable (as the section currently reads) and consistent with long-term goals that are addressed in the proposed language of the section.

Two commenters objected to the word ''appropriate'' in that it is not contained in 12 U.S.C. 4518, the statutory provision that requires the Director to prohibit an Enterprise from providing compensation to any executive officer that is not reasonable and comparable with compensation for employment in other similar businesses. The proposed provision is not intended to implement Section 4518, which is implemented by the OFHEO executive compensation regulation at 12 CFR part 1770. Section 1710.13 addresses not only certain covered executive officers, but as well board members and employees, and has as its primary focus the Enterprises—safety and soundness. Although compensation may be reasonable from some perspectives, as in not generally excessive or extreme, it may not be appropriate or suitable under specific circumstances. Thus, OFHEO has determined not to delete the word ''appropriate.''

While the circumstances involved and the foundation for addressing compensation in the corporate governance regulation may differ from those found in the area of executive compensation, the standards used by OFHEO for determining unreasonable, excessive, or inappropriate compensation are the same. In looking to reasonable compensation, OFHEO must consider the totality of circumstances for an Enterprise. This includes inquiry into compensation for comparable positions at other firms, to the degree they exist, along with less formulaic items such as the unique nature of the Enterprises, the responsibilities and duties of the individual involved, and the environment and circumstances that exist when the compensation is provided to the individual. Thus a numerical comparison alone might be inadequate for OFHEO to discharge its obligations in considering compensation. Factors such as an Enterprise's conduct, business challenges, compliance with the mission of the Enterprise, compliance with law and regulation, creation of profit or loss, leadership, suitability of incentive structures, and other relevant matters would be important to making a compensation determination under either the corporate governance rules or the executive compensation rules. In both instances, safety and soundness underlies the goals of Congress expressed in the enabling statute of OFHEO and Congress has clearly indicated that compensation may represent a safety and soundness

[14] *See Report of Special Examination, supra* note 2 at 166.

[15] *See* Consent Order, *supra* note 5 at Art. II, Para. 10.

[16] *See Report of Special Examination, supra* note 2 at 166, (discussing frequency of meetings).

[17] Final NYSE rule Section 303A.04.

[18] *See* final NYSE rules Section 303A.06 and .07. The final NYSE rule Section 303A.06 requires with respect to the audit committee that listed companies must have an audit committee that satisfies the requirements of Rule 10A–3 under the Securities ExchangeAct of 1934.

problem should it provide perverse incentives.

Section 1710.13(a), as proposed, is further intended to underscore the impropriety of compensation incentives that excessively focus the attention of management and employees on an Enterprise's short-term earnings performance. Incentives focused primarily on short-term earnings may lead to improper conduct at an Enterprise, as OFHEO discovered in its investigation of Freddie Mac.[19] Financial incentives at the Enterprises should foster a management culture in which primary consideration is given to risk management, operational stability and legal and regulatory compliance.[20] As noted above, OFHEO has determined, in light of its experience with Freddie Mac, its ongoing supervision of both Enterprises, and given their Federal charters, board structure, public mission, regulatory framework and status, size and role in capital markets, that Fannie Mae and Freddie Mac should be required to adhere to certain policies that may not be applicable to other companies. The compensation requirement in no way detracts from the obligations of Enterprise board members and management to meet their responsibilities to shareholders, but reflects the special attention that needs to be paid as well to other important public mission considerations in directing the course and conduct of an Enterprise.

One commenter recommended that executive incentives should expressly include no rewards for undue reliance on the Enterprise subsidy or any activity that would enlarge it. OFHEO has determined not to adopt that recommendation.

Section 1710.13(b) proposed to require the chief executive officer and chief financial officer to reimburse the Enterprise if the Enterprise is required to prepare an accounting restatement due to the material noncompliance of the Enterprise, as a result of misconduct, with any financial reporting requirement. Reimbursement would be made in accordance with section 304 of the SOA. Section 304 of the SOA would require reimbursement of (1) any bonus or other incentive-based, equity or option-based compensation received by such person from the Enterprise during the 12-month period following the first public issuance of the financial document embodying such financial reporting requirement; and (2) any profits realized from the sale or disposition of securities of the Enterprise that such person owned or controlled during that 12-month period. The provisions of the proposed paragraph would in no manner limit the authority of OFHEO to take any other appropriate supervisory action against an Enterprise or any of its board members or executive officers pursuant to its enforcement authorities. Enforcement authorities of OFHEO include restitution that may be applied to situations involving conduct subject to reimbursement.

One commenter asked that the reimbursement requirement be clarified to apply to restatement of financial reporting under the securities laws. OFHEO has clarified the language to state so expressly and to note that this section does not limit other OFHEO remedial powers that may be brought to bear for failures to make adequate disclosures. Another commenter suggested that the reimbursement provision is not necessary in view of the broad remedial and civil money penalty powers of OFHEO. If it is retained, the commenter requested that the requirement should apply to Freddie Mac after it has returned to the timely filing of financial statements and completed the voluntary registration of its securities. OFHEO has determined to retain the reimbursement provision as proposed with certain clarifying and technical changes.[21]

Code of Conduct and Ethics (§ 1710.14)

OFHEO proposed to amend § 1710.14 by revising the section heading to read ''Code of Conduct and Ethics,'' and by referencing the standards set forth under section 406 of the SOA. Section 406 provides that the ''code of conduct and ethics'' include standards as are reasonably necessary to promote (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer of the report; and (3) compliance with applicable governmental rules and regulations. In conducting its supervisory examination process, OFHEO would ensure the adequacy and appropriateness of the code of conduct and ethics of an Enterprise. In addition, OFHEO proposed that, at least every three years, an Enterprise must review the adequacy of its code of conduct and ethics to ensure that it is consistent with practices appropriate for the Enterprise.

A few commenters recommended that OFHEO should require the code of conduct and ethics to include the public mission of the Enterprises, charter compliance, and adherence to new program prior approval standards and affordable housing goals. OFHEO has determined compliance with law, regulation, and rules are appropriately addressed in other sections of the regulation.

Another commenter urged that OFHEO address situations where an Enterprise may use its unique characteristics to exact terms and conditions from service providers. That commenter also urged that the code should bar retaliation against entities for political purposes. OFHEO has determined not to adopt these recommendations. OFHEO notes that such conduct could be determined to violate existing safety and soundness rules and need not be subject to a special rule that could have unintended consequences that may result from unnecessary definition.

One commenter recommended a reference to the NYSE rules requiring a code of conduct and NASDAQ rules relating to review and approval of related party transactions; another commenter recommended express reference to regulations issued by the Commission implementing section 406 of the SOA. After considering these comments, OFHEO determined to clarify the section by adding language requiring the code of conduct and ethics to include standards that comply with applicable law, rules, and regulations, in addition to the express reference to section 406 of the SOA. OFHEO is adding language that expressly incorporates section 406 along with any amendments that may be made from time to time.

Another recommendation was that OFHEO should require more frequent reviews and that OFHEO require the codes to be revised whenever a new market practice or a substantive change in law or rule defines new standards. These recommendations are addressed by the provision, as modified, in that the code of conduct and ethics must include standards that comply with applicable law, rules, and regulations. In addition, OFHEO has clarified the language concerning review of the code to state expressly that after review of the code for consistency with practices appropriate for the Enterprise, the code

[19] *See Report of Special Examination, supra* note 2 at 164.

[20] Consent Order, *supra* note 5 at Art. II, Para. 14.

[21] Freddie Mac will be subject to the requirements of this section once it has filed documents that are covered by the reimbursement provisions of section 304 of the SOA. The final language of § 1710.13 uses the term ''reimbursement'' rather than ''disgorgement'' to be consistent with the language of section 304.

should be appropriately revised. In addition, it was recommended by one commenter that OFHEO change the language concerning review of the code of conduct and ethics from that of ensuring that the code is ''consistent'' with best practices to ''reviewing in light of'' best practices. Recognizing a range of appropriate practices may exist for a given matter, OFHEO has modified the language to clarify that the review of the code is to be for consistency with practices appropriate for the Enterprise.

Conduct and Responsibilities of Board of Directors (§ 1710.15)

Section 1710.15 of the current corporate governance regulation establishes appropriate standards for the conduct and responsibilities of the board of directors of an Enterprise. Given the special situation of the Enterprises, OFHEO proposed to amend § 1710.15 by adding a requirement with respect to the conduct and responsibilities of the board of directors. The proposal would require that the Enterprise board of directors must remain reasonably informed of the condition, activities, and operations of the Enterprise. The proposal would also describe the responsibility of the board of directors to have in place policies and procedures to assure its oversight of corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance, and corporate performance to include prudent plans for growth and allocation of adequate resources to manage operations risk, so as to promote safety and soundness.

One commenter recommended that OFHEO expressly provide that risk policy mean not only consideration of written policies and procedures but also that the Enterprises comply with such policies and that the board of directors has an affirmative duty to ensure that risk policies are enforced. OFHEO has determined not to adopt this recommendation because the focus of § 1710.15 is on policies and procedures designed to assure compliance. Risk management compliance is appropriately addressed in § 1710.19, discussed below.

Proposed § 1710.15 adds a provision expressly addressing the oversight responsibility related to extensions of credit to board members and executive officers, consistent with the proposed § 1710.16, discussed below. In conducting its supervisory examination process, OFHEO would ensure that adequate policies and procedures are in place. One commenter recommended that this provision be deleted because it is purportedly a narrower substantive obligation than the other oversight requirements and is otherwise addressed elsewhere in the regulation. OFHEO disagrees that it is inappropriate to list the board's oversight responsibility of limits on extensions of credit. Although § 1710.16 prohibits certain extensions of credit, responsibility for oversight is not addressed in that section. OFHEO has determined to adopt the provision as proposed.

Section 1710.16 Prohibition of Extensions of Credit to Board Members and Executive Officers

OFHEO proposed to add § 1710.16, which would limit extensions of credit to Enterprise board members and executive officers as provided generally by section 402 of the SOA. As adopted here, section 402 of the SOA would prohibit an Enterprise from directly or indirectly, including through any subsidiary, extending credit or arranging for the extension of credit in the form of a personal loan to or for any board member or executive officer of the Enterprise. OFHEO believes that it is appropriate to conform the OFHEO regulation to that of other financial institution regulators in addressing extensions of credit by companies they supervise, as the proposed section does.

Two commenters requested that OFHEO delete the reference to any subsidiary of an Enterprise because such reference implies that OFHEO intends that the Enterprises establish subsidiaries. OFHEO sees no such implication in the proposed language. OFHEO has determined not to adopt this recommendation; the intent of the language is to apply to the Enterprises the provisions of section 402 of the SOA.

Another commenter requested an express reference to interpretations of section 402 of the SOA by the Commission. OFHEO will look to the interpretations of the Commission but has determined that a modification of the proposed language is unnecessary; language has been added, however, to clarify that the reference to section 402 of the SOA includes amendments as made from time to time. With this technical modification, OFHEO has issued § 1710.16 as proposed.

Certification of Disclosures by Chief Executive Officer and Chief Financial Officer (§ 1710.17)

OFHEO proposed to add § 1710.17, which would require Enterprise compliance with section 302 of the SOA that mandates certain certifications of quarterly and annual reports by the chief executive officer and chief financial officer of an Enterprise. The proposed section would conform the OFHEO supervisory regime to those of other financial regulators, as OFHEO has determined is appropriate. The proposal would assure review, endorsement, and undertaking of responsibility by individuals required to certify public disclosures. It would not limit OFHEO from requiring certifications by additional parties or additional disclosures.

One commenter expressly supported the proposal. Another commenter requested that OFHEO clarify that the proposed provision would not require Freddie Mac to submit certifications under section 302 of the SOA until Freddie Mac completes the voluntary registration process. OFHEO has determined to retain the provision as proposed.[22] OFHEO has published § 1710.17 as proposed, with a technical correction and the addition of language to clarify that the reference to SOA section 302 includes amendments to that section as made from time to time.

Change of External Audit Partner and External Auditing Firm (§ 1710.18)

OFHEO proposed to add § 1710.18, which would prohibit an Enterprise from accepting audit services from an external auditor if either the lead (or coordinating) external audit partner, who has primary responsibility for the external audit of the Enterprise, or the external audit partner, who has responsibility for reviewing the external audit, has performed audit services for the Enterprise in each of the five previous fiscal years. This prohibition relates to section 203 of the SOA that makes it unlawful for a registered public accounting firm to provide audit services to a public company by such audit partners in excess of five previous fiscal years.

One commenter recommended that OFHEO incorporate section 203 of the SOA, as interpreted by the Commission, in the provision. OFHEO has determined not to adopt that recommendation at this time. OFHEO looks to its existing safety and soundness requirements and its supervisory program to assure that the Enterprises mitigate risk by the use of service vendors that meet standards for reliability and recourse.

Another commenter recommended that the provision require rotation of other audit partners involved in audits of an Enterprise after seven years. OFHEO has determined not to adopt this recommendation, but notes that in

[22] The provision would apply to documents filed by Freddie Mac that meet the certification requirements under section 302 of the SOA.

the matter of non-lead audit partners, OFHEO expects that the Enterprises engage auditing firms that comply with appropriate practices.

OFHEO also proposed a requirement that, at least every ten years, an Enterprise must change its external auditing firm. Many commenters objected to the proposed requirement to change the external auditing firm every ten years on the basis that such a change would be counterproductive because of loss of expertise and associated increased risk of error and fraud, lack of support for such a regulation in current literature or Federal statute, and impracticality in light of the existence of only four large accounting firms available for the work attendant to a government sponsored enterprise. The commenters opined that the safeguards of the SOA, in terms of audit partner rotations and the oversight and audit role of the Public Company Accounting Oversight Board, are adequate.

OFHEO disagrees with these commenters with respect to the Enterprises. In light of its special examination of Freddie Mac and its ongoing supervision of both Enterprises, OFHEO has determined to require Fannie Mae and Freddie Mac to adhere to certain standards to assure safe and sound operations, even though they may represent different standards than those generally applied to non-government sponsored companies or other large regulated companies. Created by Congress to facilitate liquidity and stability in mortgage markets and to advance affordable housing, the Enterprises receive special benefits from government sponsorship making them unlike other large companies in significant respects. The business of the Enterprises is limited by statute; their hedge accounts require intensive and complicated accounting; they have a unique mission; they must undertake specialized tasks by law; and, they are regulated apart from other companies due to their unique structure, that is, a single regulator for only two entities. Further, the Enterprises have grown to become two of the largest and highly leveraged financial companies in the world in terms of assets, controlling together a majority share of the secondary market for conforming mortgages. In addition, due to the government sponsorship, the Enterprises are not as susceptible to certain forms of market discipline. All of these differences and unique features demand full and accurate accounting, accounting that is essential for safe and sound operations and disclosures that assure access to capital markets. These distinctive characteristics would support the determination that Fannie Mae and Freddie Mac should adhere to certain policies that may not be applicable to other companies, including large regulated companies.

The existence of long term accounting relationships has been demonstrated, in the review of the Enterprises by OFHEO, to pose specific risks. The difficulty of changing auditing firms would not outweigh the finding of threatened harm that may be occasioned by certain long term audit relationships. Freddie Mac maintained the same accounting relationship for over 32 years and its accounting problems were only uncovered after it changed auditors in 2002. In 2005, Fannie Mae has announced that it will replace its auditor with which it has had a relationship for over 36 years.

A central argument of commenters was that the required change undermines the pressure on an audit firm, that is, if a firm has a contract and produces less than satisfactory work, then a termination of that contract brings the firm into the public eye. Also, the requirement to change firms, it is argued, removes the incentive to move against a firm as the requirement would change the firm at a set point. This, the argument goes, would remove positive pressures on the engaging company and the auditing firm. OFHEO disagrees with respect to the Enterprises. Further, in the case of the Enterprises, Congress saw fit to create a regulator to oversee the operations of the firms, including accounting standards and external audit relationships. OFHEO has the ability to act in the case of a poorly performing Enterprise auditor at any time, not just at the time of a planned change.

Further, it should be noted that OFHEO does not consider the existence at present of four major auditing firms to be an insurmountable impediment. With the proper safeguards, OFHEO would consider appropriate both Enterprises using the same auditing firm concurrently, thereby contributing to the options open to an Enterprise.

However, because both Enterprises have now changed audit firms, the provision is not included in this final regulation.

Compliance and Risk Management Programs (§ 1710.19(a) and (b))

Proposed § 1710.19 would require an Enterprise to establish and maintain a compliance program and a risk management program. OFHEO believes that the establishment and maintenance of compliance and risk management programs are essential for the continued safe and sound operations of the Enterprises.[23] The establishment of such programs, with a view to best practices appropriate for the Enterprises, will assist the boards of directors in managing their responsibilities to oversee the adequacy of policies and procedures for compliance and risk management.

Commenters generally supported the proposal. One commenter suggested that OFHEO consider whether there should be a direct reporting relationship to the board; others recommended more flexibility with respect to the structure and reporting scheme of the compliance and risk management programs. OFHEO has determined to retain the requirement that the chief compliance officer and chief risk officer report directly to the chief executive officer of the Enterprise, but has clarified that the regular reporting of such officers may be made to the board of directors or to an appropriate committee thereof. OFHEO has made other clarifying and technical changes to make the section easier to read.

Compliance With Other Laws (§ 1710.19(c))

OFHEO also proposed that if an Enterprise deregisters or does not register its common stock with the Commission, the Enterprise must comply with sections 301, 302, 304, 402, and 406 of the SOA, subject to such additional requirements as provided by § 1710.30.[24] It would also require that a registered Enterprise maintain its registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to certain requirements of the SOA, as provided above.

One commenter requested that OFHEO clarify that this provision would not apply to a situation in which an Enterprise deregisters its securities and that § 1710.30 should not be referenced in § 1710.19. OFHEO disagrees and has determined to adopt § 1710.19(c) as proposed, with minor clarifying and technical changes.

Modification of Certain Provisions (§ 1710.30)

OFHEO proposed to move provisions of its existing regulation and to maintain similar treatment for new provisions in § 1710.30 to make clear that OFHEO, in referencing and employing other

[23] *See Report of Special Examination,* Recommended Actions, Nos. 9 and 10, *supra* note 2 at 167–168, and Consent Order, *supra* note 5.

[24] This provision would apply to Freddie Mac as will provisions of sections 1710.13(b) and 1710.17 for reports that are filed subject to section 302 and 304 of SOA.

sources for corporate governance standards, may modify its requirements to meet its statutory responsibilities for oversight of the Enterprises. References to standards of Federal or state law (including the Revised Model Corporation Act), or NYSE rules in §§ 1710.10, 1710.11, 1710.12, 1710.17, and 1710.19 do not limit the ability of OFHEO to modify OFHEO standards as necessary to meet its statutory responsibilities.[25] The proposal would require that notice be provided to the Enterprises of any modifications.

Some commenters noted that OFHEO would be required to publish any modifications for notice and comment under the Administrative Procedure Act. OFHEO is clarifying the provision by adding language that would make clear that OFHEO would make modifications to its requirements pursuant to 5 U.S.C. 553. Section 553 requires notice and comment of a substantive regulation with certain exceptions, including where the regulation would grant or recognize an exemption or relieve a restriction, or for good cause found by the agency.

Issuance of Final Amendments to Regulation

OFHEO has determined to issue the final amendments to its corporate governance regulation at 12 CFR 1710. The final regulation incorporates provisions adopted as proposed as well as modifications that enhance clarity or craft a more workable regulation, many of the modifications result from comments that provided useful legal and operational insights. The final regulation continues to build the OFHEO supervisory infrastructure and to meet the ongoing efforts of OFHEO to operate in a transparent manner. The final regulation should provide greater certainty for the Enterprises regarding regulatory expectations. Appropriate corporate governance and appropriate corporate governance supervision help ensure the continued safe and sound operation of the Enterprises as directed by Congress.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The amendments to the corporate governance regulation are not classified as an economically significant rule under Executive Order 12866 because they would 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. Nevertheless, the final amendments were submitted to the Office of Management and Budget for review under other provisions of Executive Order 12866 as a significant regulatory action.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the states, on the relationship or distribution of power between the Federal Government and the states, or on the distribution of power and responsibilities among various levels of government. The Enterprises are federally chartered corporations supervised by OFHEO. The corporate governance regulation and the amendments thereto set forth minimum corporate governance standards with which the Enterprises must comply for Federal supervisory purposes. The corporate governance regulation requires that an Enterprise elect a body of state corporate law or the Revised Model Corporation Act to follow in terms of its corporate practices and procedures. The corporate governance regulation and the amendments thereto do not affect in any manner the powers and authorities of any state with respect to the Enterprises or alter the distribution of power and responsibilities between Federal and state levels of government. Therefore, OFHEO has determined that the corporate governance regulation and the amendments thereto have no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

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 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 amendments to the corporate governance regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the corporate governance regulation and the amendments thereto are not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1710

Administrative practice and procedure, Government Sponsored Enterprises.

■ Accordingly, for the reasons stated in the preamble, OFHEO amends 12 CFR part 1710 to subchapter C of chapter XVII to read as follows:

PART 1710—CORPORATE GOVERNANCE

■ 1. The authority citation for part 1710 continues to read as follows:

Authority: 12 U.S.C. 4513(a) and 4513(b)(1).

§ 1710.13 [Removed]

■ 2. Remove § 1710.13.

§§ 1710.11 and 1710.12 [Redesignated as §§ 1710.12 and 1710.13]

■ 3. Redesignate §§ 1710.11 and 1710.12 as new §§ 1710.12 and 1710.13, respectively.

■ 4. Add a new § 1710.11 to read as follows:

§ 1710.11 Board of directors.

(a) *Membership*—(1) *Limits on service of board members*—(i) *General requirement.* No board member of an Enterprise may serve on the board of directors for more than 10 years or past the age of 72, whichever comes first; provided, however, a board member may serve his or her full term if he or she has served less than 10 years or is 72 years on the date of his or her election or appointment to the board.

(ii) *Waiver.* Upon written request of an Enterprise, the Director may waive, in his or her sole discretion and for good cause, the limits on the service of a board member under paragraph (a)(1)(i) of this section.

(2) *Independence of board members.* A majority of seated members of the

[25] Section 1710.10 provides generally that an Enterprise must follow the corporate governance practices and procedures of the law of the jurisdiction in which the principal office of the Enterprise is located, Delaware General Corporation Law, or the Revised Model Business Corporation Act.

board of directors of an Enterprise shall be independent board members, as defined under rules set forth by the NYSE, as amended from time to time.

(b) *Meetings, quorum and proxies, information, and annual review*—(1) *Frequency of meetings.* The board of directors of an Enterprise shall meet at least eight times a year and no less than once a calendar quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(2) *Non-management board member meetings.* Non-management directors of an Enterprise shall meet at regularly scheduled executive sessions without management participation.

(3) *Quorum of board of directors; proxies not permissible.* For the transaction of business, a quorum of the board of directors of an Enterprise is at least a majority of the seated board of directors and a board member may not vote by proxy.

(4) *Information.* Management of an Enterprise shall provide a board member of the Enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

(5) *Annual review.* At least annually, the board of directors of an Enterprise shall review, with appropriate professional assistance, the requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties.

■ 5. Amend newly designated § 1710.12 by revising paragraph (b) and by adding new paragraph (c) to read as follows:

§ 1710.12 Committees of board of directors.

* * * * *

(b) *Frequency of meetings.* A committee of the board of directors of an Enterprise shall meet with sufficient frequency to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(c) *Required committees.* An Enterprise shall provide for the establishment of, however styled, the following committees of the board of directors, which committees shall be in compliance with the charter, independence, composition, expertise, duties, responsibilities, and other requirements set forth under section 301 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (Jul. 30, 2002) (SOA), as amended from time to time, with respect to the audit committee, and under rules issued by the NYSE, as amended from time to time—

(1) Audit committee;

(2) Compensation committee; and

(3) Nominating/corporate governance committee.

■ 6. Amend newly designated § 1710.13 by revising newly designated paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 1710.13 Compensation of board members, executive officers, and employees.

(a) *General.* Compensation of board members, executive officers, and employees of an Enterprise shall not be in excess of that which is reasonable and appropriate, shall be commensurate with the duties and responsibilities of such persons, shall be consistent with the long-term goals of the Enterprise, shall not focus solely on earnings performance, but shall take into account risk management, operational stability and legal and regulatory compliance as well, and shall be undertaken in a manner that complies with applicable laws, rules, and regulations.

(b) *Reimbursement.* If an Enterprise is required to prepare an accounting restatement due to the material noncompliance of the Enterprise, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the Enterprise shall reimburse the Enterprise as provided under section 304 of the SOA, as amended from time to time. This provision does not otherwise limit the authority of OFHEO to employ remedies available to it under its enforcement authorities.

■ 7. Amend § 1710.14 by revising the section heading, revising newly designated paragraph (a) and adding new paragraph (b) to read as follows:

§ 1710.14 Code of conduct and ethics.

(a) *General.* An Enterprise shall establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the Enterprise to discharge their duties and responsibilities, on behalf of the Enterprise, in an objective and impartial manner, and that includes standards required under section 406 of the SOA, as amended from time to time, and other applicable laws, rules, and regulations.

(b) *Review.* Not less than once every three years, an Enterprise shall review the adequacy of its code of conduct and ethics for consistency with practices appropriate to the Enterprise and make any appropriate revisions to such code.

■ 8. Amend § 1710.15 by revising paragraph (b) to read as follows:

§ 1710.15 Conduct and responsibilities of board of directors.

* * * * *

(b) *Conduct and responsibilities.* The board of directors of an Enterprise is responsible for directing the conduct and affairs of the Enterprise in furtherance of the safe and sound operation of the Enterprise and shall remain reasonably informed of the condition, activities, and operations of the Enterprise. The responsibilities of the board of directors include having in place adequate policies and procedures to assure its oversight of, among other matters, the following:

(1) Corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance and corporate performance, including but not limited to prudent plans for growth and allocation of adequate resources to manage operations risk;

(2) Hiring and retention of qualified senior executive officers and succession planning for such senior executive officers;

(3) Compensation programs of the Enterprise;

(4) Integrity of accounting and financial reporting systems of the Enterprise, including independent audits and systems of internal control;

(5) Process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors;

(6) Extensions of credit to board members and executive officers; and

(7) Responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

* * * * *

■ 9. Add new § 1710.16 to read as follows:

§ 1710.16 Prohibition of extensions of credit to board members and executive officers.

An Enterprise may not directly or indirectly, including through any subsidiary, extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any board member or executive officer of the Enterprise as provided by section 402 of the SOA, as amended from time to time.

■ 10. Add new § 1710.17 to read as follows:

§ 1710.17 Certification of disclosures by chief executive officer and chief financial officer.

The chief executive officer and the chief financial officer of an Enterprise

shall review each quarterly report and annual report issued by the Enterprise and such reports shall include certifications by such officers as required by section 302 of the SOA, as amended from time to time.

■ 11. Add new § 1710.18 to read as follows:

§ 1710.18 Change of audit partner.

An Enterprise may not accept audit services from an external auditing firm if the lead or coordinating audit partner who has primary responsibility for the external audit of the Enterprise, or the external audit partner who has responsibility for reviewing the external audit has performed audit services for the Enterprise in each of the five previous fiscal years.

■ 12. Add new § 1710.19 to read as follows:

§ 1710.19 Compliance and risk management programs; compliance with other laws.

(a) *Compliance program.* (1) An Enterprise shall establish and maintain a compliance program that is reasonably designed to assure that the Enterprise complies with applicable laws, rules, regulations, and internal controls.

(2) The compliance program shall be headed by a compliance officer, however styled, who reports directly to the chief executive officer of the Enterprise. The compliance officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current compliance policies and procedures of the Enterprise, and shall recommend any adjustments to such policies and procedures that he or she considers necessary and appropriate.

(b) *Risk management program.* (1) An Enterprise shall establish and maintain a risk management program that is reasonably designed to manage the risks of the operations of the Enterprise.

(2) The risk management program shall be headed by a risk management officer, however styled, who reports directly to the chief executive officer of the Enterprise. The risk management officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current risk management policies and procedures of the Enterprise, and shall recommend any adjustments to such policies and procedures that he or she considers necessary and appropriate.

(c) *Compliance with other laws.* (1) If an Enterprise deregisters or has not registered its common stock with the U.S. Securities and Exchange Commission (Commission) under the Securities Exchange Act of 1934, the Enterprise shall comply or continue to comply with sections 301, 302, 304, 402, and 406 of the SOA, as amended from time to time, subject to such requirements as provided by § 1710.30 of this part.

(2) An Enterprise that has its common stock registered with the Commission shall maintain such registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to the requirements of sections 301, 302, 304, 402, and 406 of the SOA, as amended from time to time, subject to such requirements as provided by § 1710.30 of this part.

■ 13. Add new subpart D to read as follows:

Subpart D—Modification of Certain Provisions

§ 1710.30 Modification of certain provisions.

In connection with standards of Federal or state law(including the Revised Model Corporation Act) or NYSE rules that are made applicable to an Enterprise by §§ 1710.10, 1710.11, 1710.12, 1710.17, and 1710.19 of this part, the Director, in his or her sole discretion, may modify the standards contained in this part in accordance with 5 U.S.C. 553 and upon written notice to the Enterprise.

Dated: March 31, 2005.

Stephen A. Blumenthal,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 05–6781 Filed 4–5–05; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18561; Directorate Identifier 2004–NM–13–AD; Amendment 39–14042; AD 2005–07–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–15F Airplanes Modified In Accordance With Supplemental Type Certificate (STC) SA1993SO; and Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes in All-Cargo Configuration, Equipped With a Main-Deck Cargo Door

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for the airplanes listed above. For certain airplanes, this AD requires inspecting to determine the airplane's cargo configuration, and reporting findings to the FAA. For airplanes modified in accordance with a certain STC or with a cargo configuration that deviates from the as-delivered configuration, this AD requires revising certain manuals and manual supplements to specify certain cargo limitations. This AD also requires relocating all cargo restraints on the main cargo deck. This AD is prompted by reports that deficiencies related to the cargo loading system may exist on all McDonnell Douglas Model DC–9–15F airplanes modified in accordance with STC SA1993SO. We are issuing this AD to ensure that cargo in the main cabin is adequately restrained and to prevent failure of components of the cargo loading system, failure of the floor structure, or shifting of cargo. Any of these conditions could cause cargo to exceed load distribution limits or cause damage to the fuselage or control cables, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective May 11, 2005.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at