

Administrator to deny an application for accreditation.

**PART 162—RULES OF PRACTICE GOVERNING REVOCATION OR SUSPENSION OF VETERINARIANS' ACCREDITATION**

11. The authority citation for part 162 would continue to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

12. Section 162.10 would be revised to read as follows:

**§ 162.10 Summary suspension of accreditation of veterinarians.**

In any situation where the Administrator has reason to believe that any veterinarian accredited under the provisions of parts 160 and 161 of this subchapter has not complied with the "Standards for Accredited Veterinarian Duties" set forth in § 161.3 of this subchapter, the Administrator may summarily suspend the accreditation of such veterinarian pending final determination in the proceeding, effective upon oral or written notification, whichever is earlier. In the event of oral notification, a written confirmation thereof shall be given to such veterinarian as promptly as circumstances permit. The Administrator may take such action if he or she deems it necessary in order to prevent the introduction into the United States or the spread from one State to another of a contagious, infectious, or communicable disease of animals, or to ensure that animals intended or offered for export to foreign countries are free from disease, or to maintain the integrity of the National Veterinary Accreditation Program.

**§ 162.12 [Amended]**

13. In § 162.12, paragraphs (b), (c), and (d) would be redesignated as paragraphs (c), (d), and (b), respectively.

Done in Washington, DC, this 25th day of May 2006.

**Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

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**BILLING CODE 3410–34–P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1732**

**RIN 2550-AA34**

**Record Retention**

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

**ACTION:** Proposed regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a proposed regulation that would set forth record retention requirements with respect to the record management programs of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises) consistent with the safety and soundness responsibilities of OFHEO under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

**DATES:** Written comments on the proposed regulation must be received by no later than July 31, 2006.

**ADDRESSES:** You may submit your comments on the proposed regulation, identified by regulatory information number (RIN) 2550-AA34, by any of the following methods:

- U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550-AA34, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- Hand Delivered/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550-AA34, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- E-mail: *RegComments@OFHEO.gov*. Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at *RegComments@OFHEO.gov*. Please include RIN 2550-AA34 in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Tina Dion, Associate General Counsel, telephone (202) 414-3838 (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:**

**I. Comments**

The Office of Federal Housing Enterprise Oversight (OFHEO) invites comments on all aspects of the proposed regulation, including legal and policy considerations, and will take all comments into consideration before issuing the final regulation. OFHEO requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5" disk or CD-ROM.

Copies of all comments will be posted on the OFHEO Internet Web site at <http://www.ofheo.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

**II. Background**

*A. Introduction*

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. OFHEO is statutorily mandated to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are capitalized adequately and operate in a safe and sound manner and in compliance with applicable laws, rules, and regulations.

The Act provides that the Director of OFHEO (the Director) is authorized to make such determinations, take such actions, and perform such functions as the Director determines are necessary regarding his supervisory authorities, which include examinations of the Enterprises.<sup>1</sup> Under the Act, the Director is authorized to conduct on-site examinations of the Enterprises each year, and any other examinations that the Director determines are necessary to ensure their safety and soundness.<sup>2</sup>

<sup>1</sup> 12 U.S.C. 4513(b)(2).

<sup>2</sup> 12 U.S.C. 4517(a) and (b).

### *B. Record Retention and Safe and Sound Operations*

In furtherance of the safety and soundness authorities of OFHEO, the proposed regulation would require the Enterprises to establish and maintain a record retention program to ensure that the records are readily accessible for examination and other supervisory purposes. OFHEO recognizes that the effectiveness of the examination process is dependent upon the prompt production of complete and accurate records. OFHEO, through the supervisory process, must have access to the records of an Enterprise that are necessary to determine the financial condition of the Enterprise or the details or the purpose of any transaction that may have a material effect on the financial condition of the Enterprise.<sup>3</sup>

Retention of such records not only facilitates the examination process, but also allows an Enterprise to manage more effectively its business and detect improper behavior that might cause financial damage to the corporation. Additionally, such records serve as documentation for an Enterprise in any controversy over its business activities or transactions.

The importance of sound record retention policies and procedures by regulated institutions also has been recognized by Congress and other federal regulators. Adequate record retention by the institutions has been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, and has been identified as a requisite component of an institution's operation and management on a safety and soundness basis.<sup>4</sup>

In addition to facilitating the oversight and enforcement of federal banking laws, adequate record retention has been recognized by Congress as being essential to the oversight and enforcement of the federal securities laws. For example, as mandated by section 802 of the Sarbanes-Oxley Act,<sup>5</sup> the U.S. Securities and Exchange Commission adopted rules requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained include an accounting firm's workpapers and certain other documents that contain conclusions,

opinions, analyses, or financial data related to the audit or review.<sup>6</sup>

As noted above, the importance of adequate record retention has been recognized by federal regulators to facilitate their oversight and enforcement of Federal laws and regulations. This proposed regulation represents a similar recognition by OFHEO. However, it is noted that the requirements of the proposal would have no effect on the policies, rules, or guidance of other federal agencies that may require record retention terms or practices different from those set forth in the proposal. This proposed regulation only addresses record retention requirements for the record management programs of the Enterprises under the safety and soundness responsibilities of OFHEO under the Act.

### **III. Analysis of Proposed Regulation**

Section 1732.1 would explain that the proposal is intended to make Enterprise records readily accessible for OFHEO examination and supervisory purposes.

Section 1732.2 would define the terms contained in the proposed regulation.

Section 1732.5 would require that each Enterprise establish and maintain a record retention program, and evaluate such program. The record retention program would be required to include a record retention schedule. Section 1732.6 would provide minimum requirements for the program, including requirements relating to a record retention schedule. Requirements relating to a record hold, specified in proposed § 1732.7 would address record retention methods, record access and retrieval policies, and notification procedures for employees. Moreover, the section would require an Enterprise employee who is aware of a potential OFHEO investigation, enforcement proceeding, or litigation involving the Enterprise or an employee to notify immediately the legal department of the Enterprise and retain any records that may be relevant to such investigation, enforcement proceeding, or litigation.

Section 1732.10 would explain that failure by an Enterprise to comply with the requirements of the proposed regulation may subject the Enterprise or the board members, officers, or employees to supervisory action by OFHEO. The section also would provide that the proposed regulation does not limit the authority of OFHEO under its safety and soundness mandate to take other actions such as conducting

examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations.

### *Regulatory Impact*

#### Executive Order 12866, Regulatory Planning and Review

The proposed regulation 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 proposed regulation was submitted to the Office of Management and Budget for review under other provisions of Executive Order 12866 as a significant regulatory action.

#### 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 must 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 proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

#### 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

<sup>3</sup> 12 U.S.C. 4632(c).

<sup>4</sup> See, e.g., 12 U.S.C. 1829b, and the *Guidelines and Interagency Standards for Safety and Soundness* at 12 CFR part 30, Appendix A, II, B.

<sup>5</sup> Public Law 107-204, 116 Stat. 745 (2002).

<sup>6</sup> 17 CFR part 210. See Release Nos. 33-8180; 34-47241; IC-2591; FR-66; File No. S7-46-02.

on the distribution of power and responsibilities among various levels of Government. The Enterprises are federally chartered corporations supervised by OFHEO. The proposed regulation sets forth minimum record retention requirements with which the Enterprises must comply for Federal supervisory purposes and address the safety and soundness authorities of the agency. The proposed regulation does 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 State and Federal levels of government. Therefore, OFHEO has determined that the proposed regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

#### List of Subjects in 12 CFR Part 1732

Government-Sponsored Enterprises, Reporting and recordkeeping requirements, Records.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to add part 1732 to subchapter C of 12 CFR chapter XVII to read as follows:

#### Subchapter C—Safety and Soundness

### PART 1732—RECORD RETENTION

#### Subpart A—General

Sec.

1732.1 Purpose and scope.

1732.2 Definitions.

1732.3–1732.4 [Reserved]

#### Subpart B—Record Retention Program

1732.5 Establishment and evaluation of record retention program.

1732.6 Minimum requirements of record retention program.

1732.7 Record hold.

1732.8–1732.9 [Reserved]

#### Subpart C—Supervisory Action

1732.10 Supervisory action.

**Authority:** 12 U.S.C. 4513(a), 4513(b)(1), 4513(b)(5), 4514, 4631, and 4632.

#### Subpart A—General

##### § 1732.1 Purpose and scope.

In furtherance of the safety and soundness authorities of OFHEO, this part sets forth minimum requirements in connection with the record retention program of each Enterprise. The requirements are intended to ensure that complete and accurate records of an Enterprise are readily accessible by OFHEO for examination and other supervisory purposes.

##### § 1732.2 Definitions.

For purposes of this part, the term:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993) (12 U.S.C. 4501 *et seq.*).

(b) *Active record* means a document that is necessary to conduct the current business of an office or business unit of an Enterprise and, therefore, is readily available for consultation and reference.

(c) *Director* means the Director of OFHEO, or his or her designee.

(d) *Electronic record* means a record created, generated, communicated, or stored by electronic means.

(e) *Employee* means any officer or employee of an Enterprise, any conservator appointed by OFHEO, or any agent or independent contractor acting on behalf of an Enterprise.

(f) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term “Enterprises” means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(g) *E-mail* means electronic mail, which is a method of communication in which:

(1) Usually text is transmitted (but sometimes also graphics and/or audio information);

(2) Operations include sending, storing, processing, and receiving information;

(3) Users are allowed to communicate under specified conditions; and

(4) Messages are held in storage until called for by the addressee, including any attachment of separate electronic files.

(h) *Inactive record* means a document that is seldom used but must be retained by an Enterprise for legislative, fiscal, legal, archival, historical, or vital records purposes.

(i) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(j) *Record* means any document whether generated internally or received from outside sources by an Enterprise or employee in connection with Enterprise business, regardless of the following:

(1) Form or format, including hard copy documents (e.g. files, logs, and reports) and electronic documents (e.g., e-mail, databases, spreadsheets, PowerPoint presentations, electronic reporting systems, electronic tapes and back-up tapes, optical discs, CD-ROMS, and DVDs), and voicemail records;

(2) Where the document is stored or located, including network servers, desktop or laptop computers and

handheld computers, other wireless devices with text messaging capabilities, and on-site or off-site at a storage facility;

(3) Whether the document is maintained or used on Enterprise-owned equipment, or personal or home computer systems of an employee; or

(4) Whether the document is active or inactive.

(k) *Record retention schedule* means a form that details the categories of records an Enterprise is required to store and their corresponding record retention periods. The record retention schedule includes reproductions, as well as all media, including microfilm and machine-readable computer records, for each record category.

(l) *Retention period* means the length of time that records must be kept before they are destroyed. Records not authorized for destruction have a retention period of “permanent.”

(m) *Vital records* means documents that are needed to meet operational responsibilities of an Enterprise under emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of an Enterprise and those affected by Enterprise activities. Emergency operating records are the type of vital records essential to the continued functioning or reconstitution of an Enterprise during and after an emergency. A vital record may be both an emergency operating record and a legal and financial rights record.

#### § 1732.3–1732.4 [Reserved]

### Subpart B—Record Retention Program

#### § 1732.5 Establishment and evaluation of record retention program.

(a) *Establishment.* An Enterprise shall establish and maintain a written record retention program and provide a copy of such program to the Examiner in Charge of the Enterprise within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made.

(b) *Evaluation.* Management of the Enterprise shall evaluate in writing the adequacy and effectiveness of the record retention program at least every three years and provide a copy of the evaluation to the board of directors and the Examiner in Charge of the Enterprise.

#### § 1732.6 Minimum requirements of record retention program.

(a) *Requirements.* The record retention program established and maintained by an Enterprise under § 1732.5 shall:

(1) Be reasonably designed to assure that retained records are complete and accurate;

(2) Be reasonably designed to assure that the format of retained records and the retention period—

(i) Are adequate to support litigation and the administrative, business, external and internal audit functions of the Enterprise;

(ii) Comply with requirements of applicable laws and regulations; and

(iii) Permit ready access by the Enterprise and, upon request, by the examination and other staff of OFHEO;

(3) Assign in writing authorities and responsibilities for record retention activities;

(4) Include policies and procedures concerning record holds, consistent with § 1732.7;

(5) Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, and administrative requirements;

(6) Include adequate security and internal controls to protect records from unauthorized access and data alteration; and

(7) Provide for adequate back-up and recovery of electronic records.

(b) *Training.* The record retention program shall provide for training of and notice to all employees on a periodic basis on their record retention responsibilities, including instruction regarding penalties provided by law for the unlawful removal or destruction of records.

#### § 1732.7 Record hold.

(a) *Definition.* For purposes of this part, the term “record hold” means a requirement, an order, or a directive from an Enterprise or OFHEO that the Enterprise is to retain records relating to a particular issue in connection with an actual or a potential OFHEO examination, investigation, enforcement proceeding, or litigation.

(b) *Notification by Enterprise.* The record retention program of an Enterprise shall:

(1) Address how all employees will receive prompt notification of a record hold;

(2) Designate an individual to communicate specific requirements and instructions, including, when necessary, the instruction to cease immediately any otherwise permissible destruction of records; and

(3) Provide that any employee who is aware of a potential investigation,

enforcement proceeding, or litigation by OFHEO involving the Enterprise or an employee shall notify immediately the legal department of the Enterprise and shall retain any records that may be relevant in any way to such investigation, enforcement proceeding, or litigation.

(c) *Method of record retention.* The record retention program of an Enterprise shall address the method by which an Enterprise will retain records during a record hold. Specifically, the program shall describe the method for the continued preservation of electronic records, including e-mails, and the conversion of records from paper to electronic format as well as any alternative storage method.

(d) *Access to and retrieval of records.* The record retention program of an Enterprise shall ensure access to and retrieval of records by an Enterprise and access, upon request, by OFHEO, during a record hold.

#### §§ 1732.8—1732.9 [Reserved]

### Subpart C—Supervisory Action

#### § 1732.10 Supervisory action.

(a) *Supervisory action.* Failure by an Enterprise to comply with this part may subject the Enterprise or the board members, officers, or employees thereof to supervisory action by OFHEO under the Act, including but not limited to cease-and-desist proceedings, temporary cease-and-desist proceedings, and civil money penalties.

(b) *No limitation of authority.* This part does not limit or restrict the authority of OFHEO to act under its safety and soundness mandate, in accordance with the Act. Such authority includes, but is not limited to, conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules, and regulations.

Dated: May 24, 2006.

**James B. Lockhart III,**

*Acting Director, Office of Federal Housing Enterprise Oversight.*

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**BILLING CODE 4220-01-P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 437

#### Business Opportunity Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Extension of period to submit comments in response to the Notice of Proposed Rulemaking.

**SUMMARY:** In a **Federal Register** notice published on April 12, 2006, 71 FR 19054, the FTC requested comment on its Notice of Proposed Rulemaking in connection with the Business Opportunity Rule. The Notice stated that comments must be submitted on or before June 16, 2006, and that rebuttal comments must be submitted on or before July 7, 2006. In response to a request for an extension of the comment period received on May 5, 2006, the Commission has extended the comment period for one additional month.

**DATES:** Comments addressing the Business Opportunity Rule Notice of Proposed Rulemaking must be submitted on or before July 17, 2006. Rebuttal comments must be submitted on or before August 7, 2006.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Business Opportunity Rule, R511993” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex W), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c).<sup>1</sup>

Comments filed in electronic form should be submitted by clicking on the following Web link: <https://secure.commentworks.com/ftc-bizopNPR/> and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <https://secure.commentworks.com/ftc->

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).