

Federal Housing Enterprise Oversight

§ 1777.26

to implement an approved capital restoration plan within such period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under paragraph (h)(1)(i) of this section into a lower capital classification.

(2) *Administrative enforcement action.* A capital plan that has received an approval order from OFHEO under this section shall constitute an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers, and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such plan.

§ 1777.24 Notice of intent to issue an order.

(a) *Orders under section 1366 of the 1992 Act (12 U.S.C. 4616).* In addition to any other action taken under this part, part 1780 of this chapter, or any other applicable authority, OFHEO may, in its discretion, issue an order to an Enterprise that is classified as significantly undercapitalized or critically undercapitalized, or is in conservatorship, directing the Enterprise to take one or more of the following actions:

(1) Limit any increase in, or reduce, any obligations of the Enterprise, including off-balance sheet obligations;

(2) Limit or eliminate growth of the Enterprise's assets or reduce the amount of the Enterprise's assets;

(3) Acquire new capital, in such form and amount as determined by OFHEO; or

(4) Terminate, reduce, or modify any activity of the Enterprise that OFHEO determines creates excessive risk to the Enterprise.

(b) *Notice of intent to issue an order.* Before OFHEO issues an order to an Enterprise pursuant to section 1366 of the 1992 Act (12 U.S.C. 4616), OFHEO will provide the Enterprise with written notice containing the proposed order.

(c) *Contents of notice.* A notice of intent to issue an order under this subpart shall include:

(1) A statement of the Enterprise's capital classification and its minimum

capital level or critical capital level, and its risk-based capital level;

(2) A description of the restrictions, prohibitions, or affirmative actions that OFHEO proposes to impose or require; and

(3) The proposed date when such restrictions or prohibitions would become effective or the proposed date for the commencement and/or completion of the affirmative actions.

§ 1777.25 Response to notice.

(a) *Content of response.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in connection with the proposed order. The response should include, but is in no way limited to, the following:

(1) Any relevant information, mitigating circumstances, documentation, or other information the Enterprise wishes OFHEO to consider in support of the Enterprise's position regarding the proposed order; and

(2) Any recommended modification to the proposed order, and justification thereof.

(b) *Time to respond.* The Enterprise may, within thirty calendar days after receipt of the notice of proposed order, submit a response to OFHEO, unless OFHEO determines a shorter period to be appropriate or the Enterprise consents to a shorter period. OFHEO may extend the Enterprise's response period for up to an additional thirty calendar days if OFHEO determines, in its discretion, that there is good cause for such extension.

(c) *Waiver and consent.* The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed order.

§ 1777.26 Final notice of order.

(a) *Determination and notice.* After the Enterprise has submitted its response under § 1777.25 or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will determine, in its discretion, whether to take into consideration such relevant information as is provided by the Enterprise in its response, if any, under § 1777.25. OFHEO