

SUBCHAPTER D—RULES OF PRACTICE AND PROCEDURE

PART 1780—RULES OF PRACTICE AND PROCEDURE

Subpart A—General Rules

- Sec.
- 1780.1 Scope.
- 1780.2 Rules of construction.
- 1780.3 Definitions.
- 1780.4 Authority of the Director.
- 1780.5 Authority of the presiding officer.
- 1780.6 Public hearings.
- 1780.7 Good faith certification.
- 1780.8 Ex parte communications.
- 1780.9 Filing of papers.
- 1780.10 Service of papers.
- 1780.11 Computing time.
- 1780.12 Change of time limits.
- 1780.13 Witness fees and expenses.
- 1780.14 Opportunity for informal settlement.
- 1780.15 OFHEO's right to conduct examination.
- 1780.16 Collateral attacks on adjudicatory proceeding.

Subpart B—Prehearing Proceedings

- 1780.20 Commencement of proceeding and contents of notice of charges.
- 1780.21 Answer.
- 1780.22 Amended pleadings.
- 1780.23 Failure to appear.
- 1780.24 Consolidation and severance of actions.
- 1780.25 Motions.
- 1780.26 Discovery.
- 1780.27 Request for document discovery from parties.
- 1780.28 Document subpoenas to nonparties.
- 1780.29 Deposition of witness unavailable for hearing.
- 1780.30 Interlocutory review.
- 1780.31 Summary disposition.
- 1780.32 Partial summary disposition.
- 1780.33 Scheduling and prehearing conferences.
- 1780.34 Prehearing submissions.
- 1780.35 Hearing subpoenas.

Subpart C—Hearing and Posthearing Proceedings

- 1780.50 Conduct of hearings.
- 1780.51 Evidence.
- 1780.52 Post hearing filings.
- 1780.53 Recommended decision and filing of record.
- 1780.54 Exceptions to recommended decision.
- 1780.55 Review by Director.
- 1780.56 Exhaustion of administrative remedies.

- 1780.57 Stays pending judicial review.

Subpart D—Rules of Practice Before the Office of Federal Housing Enterprise Oversight

- 1780.70 Scope.
- 1780.71 Definitions.
- 1780.72 Appearance and practice in adjudicatory proceedings.
- 1780.73 Conflicts of interest.
- 1780.74 Sanctions.
- 1780.75 Censure, suspension, disbarment and reinstatement.

Subpart E—Civil Money Penalty Inflation Adjustments

- 1780.80 Inflation adjustments.
- 1780.81 Applicability.

AUTHORITY: 12 U.S.C. 4501, 4513(b), 4517, 4521, 4631–4641.

SOURCE: 62 FR 68154, Dec. 31, 1997, unless otherwise noted.

Subpart A—General Rules

SOURCE: 64 FR 72510, Dec. 28, 1999, unless otherwise noted.

§ 1780.1 Scope.

(a) *Types of proceedings governed by these rules.* This part prescribes rules of practice and procedure applicable to the following adjudicatory proceedings:

(1) Cease-and-desist proceedings under sections 1371 and 1373, title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, entitled The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4631 and 4633);

(2) Civil money penalty assessment proceedings under sections 1373 and 1376 of the 1992 Act (12 U.S.C. 4633 and 4636);

(3) Civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a; and

(4) Other adjudications required by statute to be determined on the record after opportunity for hearing, except to the extent otherwise provided for in the regulations specifically governing such an adjudication.

(b) *Cease and desist orders.* (1) Grounds for instituting proceedings. Sections 1371(a) and (b) of the 1992 Act specify when the Director of OFHEO may issue a notice of charges instituting cease and desist proceedings, to be conducted according to the procedural rules in this part. The Director may issue a notice of charges as described in §1780.20 if the Director determines, or the Director has reasonable cause to believe that, an Enterprise or an executive officer or director thereof has engaged in, or it is about to engage in, any of the following conduct or violations:

(i) For an adequately capitalized Enterprise, any conduct which threatens to cause a significant depletion of the Enterprise's core capital; or for an Enterprise which is not in the adequately capitalized category, any conduct that is likely to result in a material depletion of the Enterprise's core capital;

(ii) Any conduct that may result in the issuance of a cease and desist order that requires an executive officer or director of an Enterprise to make restitution, provide reimbursement, indemnification or guarantee against loss to the Enterprise, where such person was either unjustly enriched or engaged in knowing misconduct likely to cause substantial loss to the Enterprise;

(iii) Any conduct that violates a written agreement entered into by an Enterprise with the Director; or

(iv) Any conduct that violates the 1992 Act, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*), or any regulation, rule, or order under such Acts, or any unsafe and unsound practice (in that it is contrary to prudent standards of operation which might cause loss or damage to the Enterprise, or is likely to cause such loss or damage if continued unabated), or any unsafe and unsound condition, except that the Director may not enforce compliance with housing goals established under subpart B of part 2 of subtitle A of the 1992 Act (12 U.S.C. 4561 through 4567), with section 1336 or 1337 of the 1992 Act (12 U.S.C. 4566 or 4567), or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter

Act (12 U.S.C. 4566 or 4567), or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e) or (f)).

(2) *Remedial provisions of cease and desist orders.* As provided by sections 1371(c) and (d) of the 1992 Act, a cease and desist order issued as set out in §1780.55 may require the Enterprise, or an executive officer or director thereof, to refrain from engaging in conduct or violations specified in paragraphs (b)(1)(i) through (iv) of this section and/or require correction of an unsafe or unsound condition specified in paragraph (b)(1)(iv) of this section, as found by the Director, and may also require the Enterprise, an executive officer, or director thereof to take such action as the Director determines to be appropriate to correct or remedy the conditions resulting from such conduct or violation. This may include, but is not limited to, provisions to:

(i) Require the Enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(ii) Require the Enterprise to obtain new capital;

(iii) Restrict asset or liability growth of the Enterprise;

(iv) Require the Enterprise to dispose of any asset involved;

(v) Require the Enterprise to improve design or implementation of internal policies, compliance efforts, internal controls, risk measurement and limits, and management reporting systems;

(vi) Require the Enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director);

(vii) Require the Enterprise, an executive officer or director thereof to adhere to limits on activities or functions; or

(viii) Require the Enterprise to take such other action as the Director determines appropriate.

(3) *Restitution and indemnification by executive officers and directors.* As part of the affirmative relief described in paragraph (b)(2) of this section, section 1371(d)(1) of the 1992 Act provides that the Director may require an executive officer or director of an Enterprise to make restitution or reimbursement to

§ 1780.1

12 CFR Ch. XVII (1–1–11 Edition)

the Enterprise, or to provide indemnification or guarantee against loss, to the extent such person was:

(i) Unjustly enriched in connection with the conduct or violation in question; or

(ii) Engaged in such conduct or violation knowingly, and such conduct or violation caused or would be likely to cause a substantial loss to the Enterprise.

(4) *Temporary cease and desist orders.*

(i) Under sections 1372(a) and (b) of the 1992 Act, if the Director determines that any conduct or violation or threatened conduct or violation described in the notice of charges in cease and desist proceedings described under §1780.20 is likely to cause insolvency, to cause significant depletion of core capital, or to cause other irreparable harm to an Enterprise before proceedings described in this part will be completed, the Director may issue a temporary cease and desist order. Such order may direct the Enterprise, executive officer or director thereof to refrain from the conduct or violation, and to take whatever affirmative action the Director determines to be appropriate to prevent or remedy such insolvency, depletion, or harm pending completion of such cease and desist proceedings.

(ii) In addition, section 1372(c) of the 1992 Act addresses cases in which the Director determines that the books and records of an Enterprise are so incomplete or inaccurate that the Director is unable through normal supervisory processes to determine either the financial condition of the Enterprise or the details or purpose of transactions that may have a material effect on the financial condition of the Enterprise. In connection with issuance of the notice of charges in cease and desist proceedings specified by §1780.20, the Director may issue a temporary order directing the Enterprise to cease the activity or practice that gave rise, whether in whole or in part, to the incomplete or inaccurate state of the records, and may require the Enterprise to take affirmative action to make the records complete and accurate.

(c) *Civil money penalties*—(1) *First tier CMPs.* Section 1736 of the 1992 Act au-

thorizes the Director to assess civil money penalties against an Enterprise, in proceedings to be conducted according to the procedural rules in this part. The Director may issue a notice of charges to an Enterprise, as described in §1780.20, to impose money penalties of up to \$5,000 (adjusted for inflation as described in §1780.80) for each day that the Enterprise engages in conduct that violates:

(i) The 1992 Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any regulation, rule, or order under such Acts, except with regard to housing goals established under subpart B of part 2 of subtitle A of the 1992 Act, with section 1336 or 1337 of the 1992 Act, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

(ii) Any written agreement entered into by the Enterprise with the Director; or

(iii) Any permanent or temporary cease and desist order entered under sections 1371 or 1372 of the 1992 Act, or sections 1365 (12 U.S.C. 4615, setting out supervisory actions applicable to undercapitalized Enterprises) or 1366 (12 U.S.C. 4616, setting out supervisory actions applicable to significantly undercapitalized institutions) of the 1992 Act.

(2) *Second tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to \$25,000 (adjusted for inflation as described in §1780.80) for each day that the Enterprise engages in the following violation or conduct, or to an executive officer or director of an Enterprise to impose money penalties of up to \$10,000 (adjusted for inflation as described in §1780.80) for each day such person or persons engages in the following violation or conduct, if the Director finds that the violation or conduct was either part of a pattern of misconduct or involved recklessness and causes or is likely to cause a material loss to the Enterprise:

(i) Any violation described in paragraphs (c)(1)(i) through (iii) of this section; or

(ii) Any conduct that causes or is likely to cause a loss to the Enterprise.

(3) *Third tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to \$1,000,000 (adjusted for inflation as described in §1780.80) for each day that the Enterprise engages in a violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, or to an executive officer or director of an Enterprise to impose money penalties of up to \$100,000 (adjusted for inflation as described in §1780.80) for each day such person or persons engages in such violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, if the Director finds that the violation or conduct was knowing and caused or is likely to cause a substantial loss to the Enterprise.

(4) *Amount of CMPs.* In determining the amount of a civil money penalty within the range of penalties described in paragraphs (c)(1) through (3) of this section, the Director may fashion sanctions in any such amount as deemed to be appropriate taking into consideration such factors as:

- (i) The gravity of the violation or conduct;
- (ii) Any loss or risk of loss to the Enterprise;
- (iii) Any benefits received;
- (iv) Any attempts at concealment;
- (v) Any history of prior violations or conduct;
- (vi) Any related or unrelated previous supervisory actions;
- (vii) Any injury to the public;
- (viii) Deterrence of future violations or conduct;
- (ix) The effect of the penalty on the safety and soundness of the Enterprise;
- (x) Any circumstances of hardship upon an executive officer or director;
- (xi) Promptness and effectiveness of any efforts to ameliorate the consequences of the violations or conduct; and
- (xii) Candor and cooperation after the fact.

(d) *Coordination with other supervisory actions.* In addition to cease and desist and/or civil money penalty proceedings under this part, the 1992 Act grants the Director other authority to take supervisory action, including requiring mandatory and discretionary supervisory

actions against an Enterprise that fails to remain adequately capitalized; appointment of a conservator for an Enterprise; entering into a written agreement the violation of which is actionable through proceedings under this part, or any other formal or informal agreement with an Enterprise as may be deemed by the Director to be appropriate. Under the 1992 Act, the selection of the form of supervisory action is within the Director's discretion, and the selection of one form of action or a combination of actions does not foreclose the Director from pursuing any other supervisory action.

(e) *Proceedings against affiliates.* Under subtitle C of the 1992 Act, the Director may institute proceedings as described under this part against an affiliate of an Enterprise as well as an executive officer or director of such affiliate. An entity is affiliated with an Enterprise if the entity controls the Enterprise, is controlled by the Enterprise, or is under common control with the Enterprise. For purposes of this part, control means the ability to exercise a controlling influence over the management and policies of the entity or Enterprise, whether it be by ownership of or the power to vote a concentration of any class of voting securities, the ability to elect or appoint members of the board of directors or officers of the entity, or otherwise.

(f) *Public nature of proceedings.* As described in §1780.6 of this part, all hearings shall be open to the public unless the Director in his discretion determines to the contrary based on public interest. The Director shall also make final orders available to the public, as well as modifications to or terminations thereof, except that the Director may determine in writing to delay public disclosure of such final orders for a reasonable time if immediate disclosure would seriously threaten the financial health or security of the Enterprise.

[66 FR 18043, Apr. 5, 2001]

§ 1780.2 Rules of construction.

For purposes of this part—

- (a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;