

terms for any obligation thereunder, the Enterprise's obligation continues until OFHEO issues an order terminating such obligation under the plan. The Enterprise may also submit a written request to OFHEO seeking termination of such obligations. OFHEO will approve termination of such obligation to the extent that OFHEO determines, in its discretion, that the obligation's purpose under the plan has been fulfilled and that termination of the obligation is consistent with the overall safety and soundness of the Enterprise.

(h) *Implementation*—(1) An Enterprise that has received an order approving its capital restoration plan is required to implement the plan.

(i) If OFHEO determines, in its discretion, that an Enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule thereunder, OFHEO may reclassify the Enterprise:

(A) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(B) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(ii) *Duration of reclassification*. An Enterprise's failure to implement an approved capital restoration plan as described in paragraph (h)(1)(i) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after OFHEO determines, in its discretion, that the Enterprise is making such efforts as are reasonably necessary to comply with the capital restoration plan and fulfill the schedule thereunder.

(iii) *Successive reclassifications*. If an Enterprise has not remedied its failure 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.