

§ 1777.23 Capital restoration plans.

(a) *Schedule for filing plans*—(1) *In general.* An Enterprise shall file a capital restoration plan in writing with OFHEO within ten days of receiving a notice of capital classification under §1777.21(a)(3) stating that the Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, unless OFHEO in its discretion determines an extension of the ten-day period is necessary and provides the Enterprise with written notice of the date the plan is due.

(2) *Successive capital classifications.* Notwithstanding paragraph (a)(1) of this section, an Enterprise that has already submitted and is operating under a capital restoration plan approved by OFHEO under this part is not required to submit an additional capital restoration plan based on a subsequent notice of capital classification, unless OFHEO notifies the Enterprise that it must submit a new or amended capital restoration plan. An Enterprise that receives such a notice to submit a new or amended capital restoration plan shall file in writing with OFHEO a complete plan that is responsive to the terms of and within the deadline specified in such notice.

(b) *Contents of capital restoration plan.* (1) The capital restoration plan submitted under paragraph (a)(1) or (2) of this section shall:

(i) Specify the level of capital the Enterprise will achieve and maintain;

(ii) Describe the actions that the Enterprise will take to become classified as adequately capitalized;

(iii) Establish a schedule for completing the actions set forth in the plan;

(iv) Specify the types and levels of activities (including existing and new programs) in which the Enterprise will engage during the term of the plan;

(v) Describe the actions that the Enterprise will take to comply with any mandatory or discretionary requirements to be imposed under Subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623) or subpart B of this part;

(vi) To the extent the Enterprise is required to submit or revise a capital restoration plan as the result of a reclassification of the Enterprise under §1777.20(a)(5) or §1777.20(c)(5), describe

the steps the Enterprise will take to cease or eliminate and remedy the action, inaction, or conditions that caused the reclassification; and

(vii) Provide any other information or discuss any other issues as instructed by OFHEO.

(2) The plan shall include a declaration by the chief executive officer, treasurer, or other officer designated by the Board of Directors of the Enterprise to make such declaration, that the material contained in the plan is true and correct to the best of such officer's knowledge and belief.

(c) *Failure to submit*—(1) *Failure to submit; submission of unacceptable plan.* If, upon the expiration of the period provided in paragraph (a)(1) or (2) of this section for an Enterprise to submit a capital restoration plan, an Enterprise fails to comply with the requirement to file a complete capital restoration plan, or if the capital restoration plan is disapproved after review under paragraph (d) of this section, OFHEO may, in accordance with §1777.21(a)(1)(ii) without additional notice, reclassify the Enterprise:

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

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

(2) *Duration of reclassification.* An Enterprise's failure to submit an approved capital restoration plan as described in paragraph (c)(1) 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 the Enterprise files a capital restoration plan that receives OFHEO's approval under paragraph (d) of this section.

(3) *Successive reclassifications.* If an Enterprise has not remedied its failure to file a complete capital restoration plan or an acceptable 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 (c)(1) of this section into a lower capital classification. Such reclassification may be made

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without additional notice in accordance with §1777.21(a)(1)(ii).

(d) *Order approving or disapproving plan.* Not later than thirty calendar days after receipt of the Enterprise's complete or amended capital restoration plan under this section (subject to extension upon written notice to the Enterprise for an additional thirty calendar days as OFHEO deems necessary), OFHEO shall issue an order to the Enterprise approving or disapproving the plan. An order disapproving a plan shall include the reasons therefore.

(e) *Resubmission.* An Enterprise that receives an order disapproving its capital restoration plan shall submit an amended capital plan acceptable to OFHEO within thirty calendar days of the date of such order, or a longer period if OFHEO determines an extension is in the public interest.

(f) *Amendment.* An Enterprise that has received an order approving its capital restoration plan may amend the capital restoration plan only after written notice to OFHEO and OFHEO's written approval of the modification. Pending OFHEO's review and approval of the amendment in OFHEO's discretion, the Enterprise shall continue to implement the capital restoration plan under the original approval order.

(g) *Termination—(1) Termination under the terms of the plan.* An Enterprise that has received an order approving its capital restoration plan remains bound by each of its obligations under the plan until each such obligation terminates under express terms of the plan itself identifying a date, event, or condition upon which such obligation shall terminate.

(2) *Termination orders.* To the extent the plan does not include such express 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 obli-

gation 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.