



# Financial Services Management

## GSE Regulatory Reform Rescue

**Mortgage Finance**

**Legal**

**Action Item**

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### Overview

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President Bush has signed into law sweeping reforms to the way Fannie Mae, Freddie Mac and the Federal Home Loan Banks are regulated, at the same time providing unprecedented authority for the Treasury to invest in these entities. The law responds in part to growing fears that the housing government-sponsored enterprises (GSEs) pose systemic risk to the U.S. and global financial system, also reflecting years of Congressional attention to the safety and soundness, mission and governance of the GSEs. In addition to a wide array of new standards in these areas, the law establishes a resolution process for the GSEs that, along with the conservatorship already provided by prior law, permits the establishment of a GSE receivership or “limited-life entity.” New affordable-housing goals and an

affordable-housing trust fund are established, but the new regulator may waive these if advisable in light of the condition of Fannie Mae or Freddie Mac.

## Impact

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As noted, this is sweeping legislation that many believe results in the most dramatic reform of U.S. mortgage finance since the Great Depression. The law significantly revises the supervisory framework established for Fannie Mae and Freddie Mac in 1992<sup>1</sup> and changes to the Home Loan Banks included in the Gramm-Leach-Bliley act of 1999.<sup>2</sup> These laws were to some extent a response to the stresses in the banking system of the late 1980s and early 1990s, and Congress began to consider revisions to them as early as 1998, when Freddie Mac sought to open its charter. That effort was rebuffed and Congress then began to consider the degree to which the GSEs in fact posed prudential risk and whether their activities increased mortgage availability, especially for lower-income borrowers. A series of bills were then passed by the House and considered in the Senate Banking Committee,<sup>3</sup> but none was finalized until this 2008 measure.

Much in the law – for example, the combined regulator for all the housing GSEs – tracks proposals in bills from the start of this debate. However, one section is entirely new, put in after a July 14 announcement by the U.S. Treasury and the Federal Reserve about the need for new authority to stand behind the GSEs. These provisions – discussed in depth below – for the first time permit Treasury to invest in privately-held corporations, a step many believe has turned the implicit federal guarantee long assumed to back the GSEs into an explicit one. This has to some degree calmed markets, but it raised new questions about the conflict between the GSEs' public mission and private shareholders. Unless one or another GSE is forced into resolution in the near future, Congress will turn to consideration of this contradiction in the immediate future – hearings are already planned for September – and additional legislation to restructure the GSEs still further is possible in the next Congress under a new President.

Because of the scope of the new law, only a summary of its most significant implications is here provided:

- The new regulator – the Federal Housing Finance Agency (FHFA) – is now comparable in many respects to bank regulators, with broad authority to set capital, activity, and prudential standards. Indeed, many of these – so far lacking for the GSEs – are required. As a result, a significant overhaul of GSE prudential regulation is anticipated, which could significantly alter and even reduce the scope of their activities.

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<sup>1</sup> See *Financial Services Regulation & Legislation*, January 6, 1992.

<sup>2</sup> See *Financial Services Management*, November 15, 1999.

<sup>3</sup> See FSM Reports in the **GSE** series.

Particular pressure will be placed on the portfolios held by Fannie Mae and Freddie Mac – long a source of systemic risk according to the Federal Reserve and others. Significant reduction in these portfolios will address this risk, but GSE advocates believe it could also undermine secondary-market liquidity, particularly at a time of market stress.

- **New Powers:** Despite all these possible restrictions, the law does expand GSE activities in several respects. Most significantly, Fannie Mae and Freddie Mac can now back larger loans in high-cost areas. This will make them more direct competitors with private securitizers, but this market is currently moribund. As a result, advocates believe GSE entry into a portion of the “jumbo” market will promote a recovery in affected areas. The Federal Home Loan Banks (FHLBanks) are granted only a modest extension of authority to acquire community-development assets. However, a study of whether they could securitize mortgages is also mandated, and the new regulator could authorize this without additional Congressional action if desired. Entry by the FHLBanks into the secondary market would compete directly against Fannie and Freddie, possibly improving market liquidity and Bank profitability, even if the Banks take on new risks for which some argue they are ill-prepared. Fannie and Freddie can no longer offer new products with only a cursory (if any) notice to their regulator. This power has been stripped from the Department of Housing and Urban Development (HUD) and put under the FHFA, with a stringent process including public notice and comment in advance of any new ventures.
- **New Resolution Options:** These are intended to permit more orderly closing of a troubled GSE, thus avoiding systemic risk or an explicit federal bail-out that could be more costly to taxpayers than the new backstops authorized in the law. Were a limited-life entity established – required if Fannie Mae or Freddie Mac are placed in receivership – a process for reprivatizing a failed GSE, possibly into multiple entities, would ensue. Throughout any of these resolution options, GSE shareholders or members would lose their equity and bond-holders would become creditors. However, holders of mortgage-backed securities (MBS) backed by Fannie and Freddie would be protected, limiting the possibility for market panic. A mechanism to protect qualified financial contracts (e.g., derivatives) is also provided.
- **Affordable Housing:** A new affordable-housing (AH) trust fund is created, funded by Fannie Mae and Freddie Mac after contributions are first devoted to any obligations of a new FHA program to prevent foreclosures created elsewhere in the new law. Estimates of how much the GSEs would need to contribute to the fund vary and,

as noted, contributions could be waived in their entirety if the GSEs' financial condition – now precarious – warrants. However, if contributions proceed as supporters hope, as much as \$1 billion a year would be provided for state housing and similar efforts, supplementing federal funds diminished in recent years. Tough new AH goals are established for all of the GSEs, which would force them to focus more on this sector at potential cost to profitability. The GSEs would also need to report data comparable to that filed by mortgage lenders under the Home Mortgage Disclosure Act (HMDA), exposing any discriminatory patterns, and Fannie and Freddie would need to report potential discrimination by any of their lenders – potentially increasing legal and reputational risk in this area for the industry as a whole.

## What's Next

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As part of sweeping housing legislation, President Bush signed these provisions into law on July 30. Because the law was effective on enactment, the new GSE regulator is already established, although combining the former Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board, as well as moving responsibilities from the Department of Housing and Urban Development, will take time. As noted below, the law requires an array of new rules and permits the FHFA to issue a wide array of other requirements, all of which are now underway to establish a distinctly different regulatory regime for Fannie Mae, Freddie Mac and the Home Loan Banks.

## Analysis

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The analysis below refers to GSEs when Fannie Mae, Freddie Mac, the Home Loan Banks, and the Office of Finance are covered (with the law also bringing any affiliate under its scope). The law also specifies certain requirements applicable to Fannie and Freddie versus the Home Loan Banks and this is noted when applicable.

### *I. Rescue Provisions*

The following programs are established until December 31, 2009.

#### **A. Treasury**

In addition to line-of-credit provisions under prior law (which authorize Treasury to supply up to \$2.25 billion for each GSE), Treasury now has general

authority to purchase any obligations or securities of the GSEs on terms and conditions determined by the Treasury. However, the law does not require the GSEs to accept Treasury assistance absent mutual agreement. Further, Treasury may not purchase GSE securities on the open market without GSE consent. However, the FHFA director has full discretion to alter GSE executive compensation should Treasury assistance be provided, without any requirement for GSE consent to any such action.

To use this authority, Treasury must find it necessary under emergency conditions to:

- stabilize the financial market;
- prevent mortgage-availability disruption; and
- protect the taxpayer.

On the last criterion, Treasury must take into consideration:

- the need for preferences or priorities for payment to the government;
- limits on securities to be purchased;
- a GSE's plan for orderly resumption of private-market activities;
- the probability the GSE will meet any terms or conditions;
- the need to maintain the GSE as a privately-owned company;
- restrictions on GSE resources, including dividend or compensation ones; and
- any other additional protections.

## **B. Federal Reserve**

To ensure financial-market stability, the FHFA and FRB are to consult on issues such as the risks to the financial system posed by the GSEs, the new prudential and portfolio standards (see below), and any conservatorship or receivership action.

# ***II. Regulatory Structure***

## **A. FHFA**

The FHFA is an independent agency funded through assessments (which may be increased for higher-risk institutions) imposed on the GSEs set outside the Congressional appropriations process. It will be run by a Presidentially appointed, Senate-confirmed director (the "Director") who can only be fired by the President "for cause" (protection comparable to that of other bank regulators). There are three deputy directors to govern Fannie and Freddie, the Home Loan Banks and the GSEs' housing activities, as well as an ombudsman to hear complaints from the GSEs and those with business relations with them. In taking any action affecting the Home Loan Banks, the regulator will need to consider the differences

between the Banks and the other GSEs, with the law detailing specific factors to be taken into account.

The current OFHEO director takes over FHFA until a confirmed Director is available. The agency will be subject to GAO audit, with that office required to report to Congress upon the conclusion of audits conducted at least every three years. It will also have to have an inspector-general.

## **B. Federal Housing Oversight Board**

This Board will be chaired by the Director and include the Secretaries of Treasury and HUD, as well as the Chairman of the SEC. The Board can have staff and will have to meet at least quarterly (with members other than the Director empowered to call any special meetings), and present annual testimony to Congress. The Board will advise the Director on strategy and other issues either at the Director's request or on its own initiative, with an express prohibition on the Board taking on any of the duties mandated for the Director.

## **C. Authority and Responsibility**

### ***1. Powers***

FHFA will have "general" regulatory authority – that is, the power to govern the GSEs as needed beyond express direction in law. It will also have "incidental" authority to execute its responsibilities when these are not clearly delineated. The agency may sue on its own behalf (a power not provided to its predecessor). It is also charged with reviewing and, if necessary, rejecting acquisition or transfer of control at Fannie Mae or Freddie Mac.

### ***2. Duties***

These include ensuring that the GSEs are:

- prudently regulated on a consolidated basis;
- safe and sound;
- engage in activities that foster a resilient and efficient national housing market that reduces the cost of mortgage finance, including activities to promote AH that may provide less than a wholly-desirable economic return;
- in compliance with all requirements; and
- engage only in activities that are authorized by law and carry out their statutory mission, as well as operate in the public interest.

### ***3. Prudential Regulation***

The law expressly requires the FHFA to govern the following safety-and-soundness issues:

- internal controls and information systems;
- audit systems;
- credit risk;
- interest-rate risk;
- market risk;
- liquidity and reserves;
- asset and investment portfolio management;
- investments and acquisitions to ensure compliance with the GSE charters and other applicable law;
- subordinated-debt issuance (as deemed necessary);
- corporate governance;
- operational risk; and
- any other risks or activities determined by the Director.

The law includes steps that must be taken if any of these prudential standards are violated. These steps include an express limit on asset growth, a capital increase, or any other action deemed necessary.

#### ***4. Reports***

The Director can order any regular or special reports -- including requiring disclosures on a fair-value basis -- it needed from the GSEs, with no limitation on the ability to make these public as desired. The GSEs will also need to report potentially fraudulent mortgages or financial instruments, with procedures mandated to ensure timely discovery of potential fraud.

### **D. Regulatory Capital**

#### ***1. Risk-Based Capital***

The Director is required to establish RBC rules for all of the GSEs.

#### ***2. Minimum and Critical Capital***

Minimum capital for the FHLBs remains their current leverage ratio and Fannie/Freddie minimums are unchanged from prior law. However, the Director has the authority to raise all these minimums if safety-and-soundness concerns warrant.

In addition, current or higher minimum capital ratios for the GSEs may be increased on a temporary basis. Rules on how any such temporary capital requirements would be imposed or lifted are required.

The Director can also mandate higher minimum capital and/or reserves for any GSE program or activity.

The FHLB critical capital ratio will be any level determined by the Director, generally keeping the Bank critical ratios comparable to those set for Fannie and

Freddie. Rules implementing this requirement will have to be issued within 180 days.

### **E. Prompt Corrective Action**

The Director now has authority to take an array of increasingly stern actions as a GSE slips from adequately capitalized to under-capitalized, significantly under-capitalized and critically under-capitalized. At the last of these thresholds, a conservatorship, receivership or bridge status (see below) can be imposed on Fannie Mae, Freddie Mac, or a Home Loan Bank. Intervening sanctions include prohibitions on dividends, mandatory capital-restoration plans, dismissal of officers or directors, revised business plans and other sanctions detailed in the law analogous to the requirements governing bank regulators. These sanctions are considerably tougher than those in prior law for Fannie Mae and Freddie Mac and now will govern the Home Loan Banks as well.

Although these prompt-corrective-action determinations are based on specific capital ratios, the Director can downgrade a GSE if deemed necessary because of prudential concerns (including a reduction in the value of collateral backing a GSE's assets).

## ***III. Corporate Governance***

### **A. Compensation**

The FHFA gets broad authority to mandate the withholding of executive compensation at all of the housing GSEs. Compensation reimbursement will be required following any accounting restatement. The annual FHFA report to Congress will need to include information on board compensation.

In addition, new restrictions apply to any "golden parachutes," along with any indemnification agreements for directors, senior executives and other affiliated parties. To avoid prohibitions, GSE payments will need to comply with standards the Director must establish by rule or order.

### **B. SEC Registration**

All of the GSEs are required to register at least one class of equity with the SEC (largely done in advance of enactment). Existing exceptions (e.g., those related to insider trading) are removed for Fannie and Freddie, but these are retained for the FHLBanks along with new clarifications for their stock following registration. The SEC is to issue rules detailing all of these requirements for the Home Loan Banks.

### **C. Board and Related Criteria**

The law eliminates Presidential appointees of the Fannie Mae and Freddie Mac boards. In addition, governance of the Home Loan Banks is altered to



require each Bank to have a thirteen-member board meeting specified requirements. Instead of public-interest directors named by the regulator, Bank boards will need to include independent directors, of whom two must also have public-interest experience.

Further, the law codifies (with numerous exceptions) an OFHEO rule mandating corporate governance improvements at Fannie and Freddie.

## ***IV. Mission Supervision***

### **A. New Products**

Current law regarding HUD consideration of new programs at Fannie Mae and Freddie Mac is repealed in favor of a mandatory process at the FHFA for new “products.” However, the agency will also have sweeping power over existing products, as well as activities related to new or existing products. Products are defined to cover all Fannie Mae and Freddie Mac ventures except automated underwriting in place on enactment (including technological changes), changes to mortgage underwriting-terms (as long as these do not involve new business activities) or any activities similar to these exceptions (with this exception to be detailed by rule).

Fannie and Freddie will generally need to file an application with the regulator when they wish to engage in a new product. The regulator will determine the content of this application and, upon receipt of one, will need immediately to make it public and get comment on it for thirty days. The Director will have to approve, conditionally approve or deny an application thirty days after the close of the public comment period. If the Director fails to act, the GSE can offer the product. However, a GSE may temporarily offer a new product under “exigent” circumstances,

The Director may only approve new products if he or she finds that:

- they are consistent with the GSEs’ charters;
- they are in the public interest; and
- they are consistent with the safety-and-soundness of the GSEs and the mortgage finance system.

Fannie and Freddie must notify the Director if they think any venture is not a product subject to the application process noted above. The Director will then review such activities and, if he or she found them to be products within fifteen days, or related to products, force the venture back into the application and public-notice process.

### **B. Asset and Portfolio Limits**

Under rules to be issued 180 days after the effective date, the Director will establish standards to evaluate the degree to which the Fannie Mae and Freddie Mac portfolios, or their rate of growth, comply with their mission and are safe and sound. In setting these rules, the Director will need to consider:

- the ability of the GSEs to create a liquid secondary market;
- the size or growth of the mortgage market;
- the need for the portfolio to maintain the liquidity or stability of the secondary mortgage market;
- the need for an inventory of mortgages in connection with securitizations;
- the need for the portfolio to directly support the affordable-housing mission;
- the liquidity needs of the enterprises;
- any potential risks to the enterprises; and
- any additional factors related to safety and soundness the Director determines to be appropriate that are consistent with applicable law.

The Director can temporarily adjust any limits to respond to market or a GSE's conditions.

In addition, the Director can by order and without regard to GSE capital, require an enterprise to acquire or dispose of assets as long as such order was consistent with applicable law.

### C. Loan Limit

The Fannie/Freddie conforming loan limit will be based on current amounts (now \$417,000 for a single-family home), with this amount increased annually according to FHFA derived house-price data. If house prices decrease, then the loan limit will not drop, but decreases will be netted against any future increases until the loan limit again increases without constraint.

The basic loan limit is also increased in high-cost areas where 115 percent of the median house price exceeds the standard GSE limit. The high-cost area limit is raised to the lesser of 150 percent of the GSE limit or 115 percent of the median house price in that area. These new limits are effective in 2009, following expiration of higher GSE loan limits from economic-stimulus legislation enacted earlier this year.<sup>4</sup>

It is the "sense of Congress" that higher-limit mortgages be securitized, not held in portfolio.

### D. Affordable Housing

#### 1. Report

A comprehensive annual report on all of the GSEs' housing commitments will be required, with the report addressing not only their direct activities (including HMDA-style data), but also such issues as the degree to which they deal with mortgage originators found to discriminate. The report will also look in detail at eligible and ineligible mortgages purchased by the GSEs, including such issues as

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<sup>4</sup> See Client Report **MORTGAGE60**, *Financial Services Management*, February 21, 2008.

loan-to-value ratios (taking into account second liens). Monthly public reports of this data are required.

In addition, the GSEs will need to track their purchases on criteria comparable to those applicable to lenders under HMDA and make public reports accordingly.

The Director will also be required to report if the GSEs or lenders are engaged in loan discrimination.

## ***2. Housing Goals***

As noted, AH authority is moved from HUD to the FHFA, with the Director charged with setting new goals to take effect in 2010. The law details the components of these goals, which in general are more stringent than those previously in place. Of particular note is a requirement that only loans that are prudential and meet good lending practice may count towards these goals, with FHFA required to issue rules defining these criteria. A GSE may petition to have its goals altered, with the law detailing the process for doing so (which include public comment).

The current 2009 goals remain, but the Director may waive them if necessary under market conditions (following a thirty-day comment period).

The new AH goals are accompanied by extensive enforcement provisions, along with a new report to Congress. Among other penalties, the Director may impose monetary fines against a GSE that fails its stipulated annual goals.

## **E. Interest-Rate Disparities**

Upon request by the Director, a GSE would need to provide data to determine if there are rate disparities on minority loans. If the Director determines a pattern of disparities by any lender, they would need to refer this to the appropriate regulator or enforcer and require any additional necessary data. An annual report to Congress is required (which may include the names of lenders after various protections are exhausted).

## **F. Duty to Serve**

Fannie and Freddie are given a new “duty to serve” under-served markets by undertaking activities for very low-, low- and moderate-income families that increase the liquidity of mortgage investments or available capital. These activities may not earn a desired profit, although a “reasonable” return is allowed. Fannie and Freddie are required to “lead the industry” in several areas detailed in the law.

By rule, the Director by 2010 will need to establish a method for determining compliance with these new duties to serve under-served markets. Compliance ratings for each year would need to be part of the Director’s annual report to Congress. The new duties are enforceable to the same extent as compliance with the affordable-housing goals (although broader penalties are proscribed).

## **G. Trust Fund**

Fannie and Freddie are required to allocate 4.2 basis points of each dollar of unpaid principal balance of total new-business purchases. Twenty-five percent of these funds would be allocated to a reserve fund at Treasury for the new FHA-rescue program mandated elsewhere in the law. The remaining seventy-five percent would initially go to fund the FHA-rescue program, with amounts declining over three years. After that, these funds would be split between a HUD fund to support state housing efforts and a new “Capital Magnet Fund” at Treasury. The law includes extensive detail on both the HUD and Treasury programs; for example, recipients may not use this money to support political advocacy efforts.

These contributions may be suspended if the Director finds they contribute to a GSE’s financial instability, lead to under-capitalization or undermine a capital-restoration plan. Rules must be issued to prevent the GSEs from passing through the cost of these allocations to mortgage originators or securitizers. All of these requirements in this section are also subject to express enforcement provisions.

## ***V. Conservatorship and Receivership***

These options will be available for all of the GSEs, not just Fannie Mae and Freddie Mac. The Director’s decision to establish either a conservatorship or a receivership can be challenged in court by a GSE and a Federal Home Loan Bank must be given a hearing prior to liquidation. The law specifies an array of situations in which the Director may exercise these options, which include not only a GSE’s descent into the critically under-capitalized category, but also violations of law or any final enforcement orders, the Director’s judgment about a GSE’s solvency, and similar developments.

### **A. General Authority**

As either conservator or receiver, the Director will run a GSE as if it were the GSE’s board and officers. As a conservator, the Director will attempt to restore the GSE to sound operating condition on behalf of its shareholders and other obligors. As receiver, the GSE can go into liquidation, with the government receiving its assets with consideration of the liquidation’s impact on national housing markets. In a receivership, a “successor organization” can be established. The Director will have full rulemaking authority with regard to both conservatorship and receivership, along with incidental authority as needed. However, a GSE’s charter cannot be revoked. A receivership will be mandatory under certain circumstances if critical thresholds are transgressed.

### **B. Receivership**

Were a receivership declared, the following will come into play with regard to claims on a GSE:

- a claims process akin to bankruptcy will be initiated by the Director. Claims by the Federal Reserve or U.S. government will be given priority. There will be no court review of receiver determinations;
- after the receiver, holders of general obligations (i.e., GSE debt, joint-and-several FHLB obligations) will have the first claim, with those holding subordinated debt the second, general creditors the third and shareholders last;
- reports will be filed with Congress (which will otherwise play no role);
- fraudulent transfers can be reclaimed by the receiver, subject to court proceedings if sought by the asset holder. In general, the receivership is limited to the same powers granted the FDIC as a receiver of a failed bank;
- mortgages that back MBS or are otherwise held in trust by the GSE are not available to back claims;
- contracts may be repudiated, with the exception of “qualified financial contracts” or QFCs (e.g., derivatives). A conservator can also repudiate contracts. Residential MBS and similar agreements (i.e., REMICs) are also deemed QFCs, which means that the receiver or conservator can not repudiate the GSE’s guarantee. However, the law expressly exempts from this protection certain arrangements related to commercial mortgages unless the Director protects them in the receivership regulations. In addition, QFC protection does not apply to any collateral pledged against extensions of credit from the Federal Reserve to a GSE; and
- procedures may be initiated against institution-affiliated parties.

### C. Limited-Life Entity

This must be established for Fannie Mae or Freddie Mac in a receivership; the status is optional for a comparably-situated Home Loan Bank.

These entities take on GSE activities and obligations deemed appropriate by the Director. However, liabilities in excess of a GSE’s assets may not be transferred to the limited-life entity. The law details how these entities are to be run (e.g., management, boards, etc.) and expressly states that prior GSE shareholders have no rights to the new firm. The law states that no such entity is to be considered an agency or instrumentality of the U.S. Government, although it would be exempt from most state and local taxation. It can, however, issue debt on its own behalf (which could after a review process take a prior lien on a GSE’s assets above those of other creditors).

Shares of the limited-life entity could, if approved by the Director, be sold to the public. Upon the sale of eighty percent or more of the limited-life entity, its status as such would end. At that point, the government would need to sell any remaining stock within one year (with two additional years possible). A limited-life entity would otherwise need to be wound-up in two years (with three additional years possible). Importantly, public stock could not be sold for any limited-life entity that succeeds a Home Loan Bank.

The law includes detail on how any limited-life entity is to run, including how its board and management are constituted, (including a potential dual role for employees as both private-sector persons and government officials) the role of current GSE charters (generally remaining in force).

## ***VI. Enforcement***

### **A. Institution-Affiliated Parties**

The law broadens the scope of penalties that can apply to such persons (e.g., officers, directors and consultants).

Non-profit organizations that receive their principal funding from a GSE will also be “institution-affiliated parties,” potentially subjecting them to enforcement action.

### **B. Actions**

The law tightens the cease-and-desist and money penalty provisions that now apply to Fannie and Freddie, extending this more stringent framework also to the Home Loan Banks. In addition, the Director will have a broad range of enforcement powers against “institution-affiliated parties” at the Home Loan Banks. This will give him or her power not only over officers, but also over directors and System members, potentially subjecting them to penalties for actions now covered solely by the banking agencies (if at all).

## ***VII. Federal Home Loan Banks***

Key provisions related to them in addition to those noted elsewhere in this analysis are discussed below.

### **A. Joint-and-Several Liability**

The Director will have to issue rules to ensure information-sharing within the Bank system to give each Bank a clear picture of its potential liability and to comply with SEC registration requirements.

### **B. Merger**

With the approval of the Director, Home Loans Banks will be allowed voluntarily to merge with other Banks. The Director will need to issue rules (with no deadline set for them) on how these mergers will be accomplished and how members approve them. The number of Bank districts may be reduced below eight in a voluntary merger or following liquidation of an FHLBank.

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### **C. Community Members**

The size of members eligible to engage in certain activities is increased from \$500 million to \$1 billion and broadened to include community development financial institutions.

### **D. Collateral and Mortgages**

Within 180 days, the Director must provide Congress with a report on the collateral backing FHLB advances, an issue that must also be addressed in the annual Congressional report noted above. A rule to implement this revised system for the Home Loan Banks will have to be issued within 180 days. In addition, the Banks will need to provide the Director with a public-use database on mortgages in their purchase programs, including HMDA-equivalent data.

### **E. Acquired Member Assets**

This program will be expanded to include “community development” related assets. This can permit the Banks to acquire small-business or other loans now not authorized by the FHFB.

### **F. Affordable Housing**

Affordable-housing goals comparable to those noted above for Fannie Mae and Freddie Mac will need to be set for any FHLB mortgage-purchase programs. However, in setting these goals, the “unique mission and structure” of the Banks must be taken into account. Interim target goals for the first two years after enactment must be set to ease transition. However, the Director must monitor and enforce all these goals to the same extent required for the other GSEs.

In addition, for two years, Banks may use the current affordable-housing program to refinance loans to prevent foreclosure, based on percentages and any other limits to be set by the Director.

## ***VIII. Miscellaneous Provisions***

### **A. Bridge Savings Associations**

As noted, the law includes authority for the FDIC to create bridge savings associations comparable to the bridge banks that may be formed in a bank failure. The limited-life entities described above are a comparable resolution option for the GSEs.

### **B. Reports**

These include:

- an ongoing assessment by the Director of guarantee fees charged by Fannie Mae and Freddie Mac;

- a study of GSE default-risk revaluation, with particular attention to development of standardized metrics, due to Congress within one year;
- a study of securitization of FHLB acquired member assets, including review of public comments. This report is also due one year from enactment; and
- within one year, a study of the degree to which FHLB collateral complies with the banking-agency guidance on non-traditional mortgages.<sup>5</sup> This study would also be subject to public comment.

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<sup>5</sup> See Client Report **MORTGAGE14**, *Financial Services Management*, May 18, 2007.