

# GSE Activity Report

July 6, 2009

## Eye of the Beholder

### Overview

FHFA Thursday issued an interim final rule (IFR) on the new-product approval process mandated in the 2008 reform law. The statute didn't dictate a deadline for this, but FHFA has issued an IFR – not a proposal – based on its view that this is an urgent matter because of the conservatorship. It is unclear if this is sparked by any potential ventures one or another GSE has in mind that, if it went live without public notice, would spark howls from the industry or the Hill.

### Impact

Under the rule, FHFA has ducked on deciding what's a product versus an activity as detailed in last year's law. Under HERA, new "products" were to be deferred until a quick public notice-and-comment process informed the FHFA's views on whether the venture was charter compliant, prudent and in the public interest. Any "activity" that might not be a product was to be submitted via prior notice by the GSEs to facilitate minor modifications of the few existing activities grandfathered in the law.

However, FHFA reads HERA as failing to define either product or activity, a task it finds too difficult to do on its own. As a result, the IFR puts every new venture into the activity category at the start, requiring the GSEs to give FHFA prior notice on most everything and then leaving it to FHFA to decide on a case-by-case basis what might trigger public notice. "Exigent" products could be rushed into the market without prior notice and comment, but FHFA would ask for views on them and provide only temporary authority for any emergency ventures.

Interestingly, the new-product process for one GSE is waived if the other has received approval to engage in a new venture, although the new entrant must still file an activity prior notice. This approach presumes that the mission and related product issues have been handled with the first GSE, although it doesn't necessarily address prudential issues that could be specific to one or another GSE. However, the

IFR reserves prudential and capital authority, suggesting that these reviews might be separately conducted for each of the GSEs entering a new line of business.

## Outlook

As noted, it's unclear why FHFA rushed this out since there's no deadline nor any apparent urgency to the new-product process. In the IFR, FHFA states that speed is required because the GSEs must meet their public mission in conservatorship, noting the need for them to "contribute to combating the continuing deterioration and volatility of the residential mortgage market." Of course, FHFA has throughout the conservatorship worked with – or sometimes on – the GSEs to get into new ventures. Most notable among these are the 105% LTV refinancing that last week turned into 125% loans without any advance notice or comment. The GSEs are under a lot of pressure to engage in all sorts of new activities in the current crisis – warehouse financing coming most immediately to mind – and FHFA may have decided to get this process out now as it finalizes its decisions on what to do on these requests.

Comments are due by August 31.