



GSE Activity Report

Wednesday, December 21, 2022

New to You

Summary

Finally taking what was supposed to be an “interim” [final rule in 2009](#), FHFA yesterday finalized a variation on Mark Calabria’s 2020 new-product [proposal](#). FHFA still has more discretion over which activities go into this process and what the market then knows about them, but the standards would nonetheless exert a lot more discipline and at least some transparency over what the GSEs can launch into the marketplace in which they still can convey a killer punch.

Impact

After HERA [demanded more of FHFA](#) in curbing new products, the agency issued a 2009 interim final rule that gave Fannie and Freddie continued, broad discretion to launch new products as “pilots” even if the pilot had considerable market impact. This led to ongoing controversies about GSE products, especially those in the warehouse financing and credit enhancement area, controversies FHFA now seeks to resolve with a more stringent and transparent new-product approval process.

Key provisions in the final rule include:

- As proposed, different processes will be used for new activities and new products, with activities allowed to proceed after prior notice and products requiring prior approval. The rule lays out the characteristics distinguishing new activities from new products, with GSEs allowed to consult with FHFA to know which is which before they head into a new venture.
- In contrast to the proposal, GSE submissions are simpler but the proposed requirement that an executive officer certify whether a GSE thinks something is an activity or a product is retained.
- Although the rule provides characteristics of activities and products, FHFA retains considerable discretion to make this call no matter what a GSE may think. “Newness” criteria remain broad and do not have the materiality or other criteria the GSEs and some other commenters sought to limit agency discretion to differentiate new activities from new products. Statutory exclusions (e.g., for AU and now also for similar activities) are of course retained, but now more clearly defined. Importantly, all the new programs the GSEs are launching under the equitable-finance [plan](#) must go through this process regardless of the extent to which FHFA approved the plan itself.
- Once a new-activity determination has been sought, there is no deadline for considering a submission complete and then commencing this process. When FHFA makes this determination, the clock starts with a fifteen-day period for considering an activity. If the GSE proposal is deemed an activity, then the GSE may start it up under whatever conditions FHFA set.
- If FHFA decides a new activity is a new product, then FHFA will publish a public notice seeking comment over thirty days and reach a decision thirty days thereafter. Products would be approved

after this comment period based on FHFA determination that the product is safe and sound, in the public interest (a term defined with eight often-subjective criteria), and authorized for the GSEs under law. Controversial public-interest criteria related to market competition are retained, as is the extent to which a product is offered by other entities.

- Pilots remain within the new-activity category given the impact of GSE activities, with subsequent notices required if the pilot changes its term or volume. FHFA rejected comments seeking to ensure that pilots are open to a wide range of market participants on grounds that current diversity standards address this.
- FHFA has retained discretion to disclose information the GSEs think confidential in requests for public comment.
- FHFA rejected comments seeking monthly, quarterly or annual disclosure of what the GSEs wanted and how FHFA treated it. Instead, the agency will make public reports on the activities and products sought by the GSEs and its decisions thereon. However, the final rule reaches no decision about how and when this will be done, instead suggesting that existing reports to Congress or the public provide the framework for doing so.

Outlook

The final rule will be effective sixty days after *Federal Register* publication. The Calabria approach would have terminated all these new-product constraints with the end of the conservatorship, leaving only the law's far gentler approach in place. FHFA has, however decided to keep this rule regardless of the GSEs' status, likely a bow to Administration concerns about the competitive clout two privatized GSEs would hold without a lot more structural constraint.