



GSE Activity Report

Thursday, April 20, 2023

From Plans To Purpose

Summary

FHFA yesterday [proposed](#) a sweeping rule that would codify Sandra Thompson's equitable- and fair-housing standards in a rule that any future FHFA director would have to work a lot harder to reverse. Indeed, not only would new plans become a mandatory part of the GSEs' mission, but violations of them by Fannie or Freddie or any other fair-lending, equity, or related standard by all of the housing agencies could be sanctioned as unfair or deceptive acts or practices (UDAP), a page from the [CFPB's](#) rulebook that affords a far greater scope to call an action discrimination and then punish it at even greater legal and reputational cost. Even if spared new plans – and that's a big if – Home Loan Banks would also be brought into a far more exacting equity construct far beyond current adherence to statutory AHP requirements.

Impact

Key provisions in FHFA's proposal would:

- add UDAP powers to the equity regulatory construct. While this does not go as far as the CFPB's UDAAP standard where the extra A stands for "abusive," FHFA clearly means to give itself expanded authority to sanction regulated-entity activities and those of the third parties on which they depend. Thus, even if an enterprise could successfully argue that something it has done is necessary for safety and soundness, FHFA could still override that on UDAP grounds. UDAP citations also allow FHFA to punish actions that may not violate technical anti-discrimination provisions;
- expressly demand that boards of directors ensure effective equity programs, outreach, and compliance;
- demand that regular fair-lending reports submitted to FHFA include certifications that fair-lending and UDAP provisions have been met. The FHLBs are covered by this new reporting rule even though FHFA says it does not currently plan to demand such reports from the System. The certifications standards are general so that FHFA can adapt them as needed, with extensive questions posed on how best to do so in the final rule or thereafter;
- codify GSE data-gathering requirements regarding matters such as language preference that also govern originating lenders;
- codify a duty of Fannie and Freddie to make equitable-finance plans and meet them in concert with a mandate for program activities, ample public engagement, and effective FHFA oversight. The NPR also includes extensive standards for these plans along with timing and content. The NPR also expressly says that FHFA approval of a plan does not constitute approval of new products or, indeed, even of the plan itself. GSEs would also be required to conduct and release performance reports and their boards would come under new governance standards

- to ensure that plans meet all the objectives and measurement criteria also detailed in these standards; and
- add all the fair- and equitable-housing standards to those the FHFA can enforce under its prudential powers (e.g., via mandatory remediation).

Outlook

As noted, the equitable-finance plan standards – extensive, binding, and enforceable – would apply only to Fannie and Freddie. However, FHFA is considering mandating like kind plans from the Home Loan Banks after taking into account differences between the GSEs and the Banks. Comment is sought on whether and how to do so, a request sure to elicit extensive commentary that may well persuade FHFA to do what it likely wants to do: mandate equitable-housing plans or other standards for the System governing both System AHP activities and whom they fund how.

Comments are due within sixty days of *Federal Register* publication, with the NPR also posing numerous other requests for views on matters such as ways to improve fair-lending compliance and enforcement, the new UDAP construct, and whether the GSEs' equitable-finance plans should be still more equitable, bigger, faster, or tougher.