



GSE Activity Report

Tuesday, April 30, 2024

Public-Interest Regulation

Summary

In conjunction with releasing its new [fair-housing rule](#), FHFA yesterday also [created](#) a new office of “Public Interest Examination.” In short, Fannie, Freddie, and the Home Loan Banks are henceforth – at least for the tenure of this President and FHFA director – to be held to standards that cement their role as public utilities, not privately-owned enterprises. This is neither unexpected nor unjustified – after all, the regulated entities enjoy manifold taxpayer benefits and two are in conservatorship. Still, it continues to make it even harder to turn the clock back on Fannie and Freddie or to return the Home Loan Banks to the quiet corners in which they and members enjoyed so many advantages.

Impact

FHFA says the final rule codifies much of its current practices and, when it comes to Fannie and Freddie, this is generally true when it comes to [fair housing](#) and sweeping [equitable-finance plans](#). However, the final rule goes considerably further than current practice for the FHLBs and, even where the rules just codify current practice, they do so with additional transparency, board-certification requirements, and oversight that ups this already formidable ante (especially for the Home Loan Banks facing new “voluntary”-disclosure obligations for “meaningful” equity efforts and a generally higher duty to do more of what FHFA thinks right. The stakes are also a lot higher thanks to a new UDAP enforcement penalty when FHFA thinks the entities have shirked their fair-housing obligations.

The UDAP provisions will have long-term consequences. The final rule clarifies that UDAP compliance is separate from fair-lending compliance, a clarification some industry commenters sought that does not detract from this rule’s expansive statement about FHFA’s authority to sanction the entities for consumer-protection, asset disposition, or violations related to “fair competition” regardless of any assertions related to discriminatory intent or effect. And, while FHFA says it won’t go after the entities’ “primary” counterparties, it does say that it will coordinate with other regulators, including the CFPB, if it sees something it doesn’t like.

Outlook

FHFA isn’t done with the Home Loan Banks. Although it decided against mandating equitable-finance plans akin to those for the GSEs, it not only included the aforementioned transparent disclosures designed to push the Banks to do more, but also says it is exploring new rules or guidance specific to equitable-finance plans.

However, the voluntary disclosures for the Banks will be delayed until a February 2026 compliance deadline. The rest of the rule goes into effect sixty days after *Federal Register* publication. Notably, the final rule now contains a severability clause, meaning that a legal challenge to one part of the reg would not necessarily threaten the rest.