

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 81

[Docket No. FR-4297-A-01]

RIN 2501-AC41

The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Advance Notice of Proposed Rulemaking

AGENCY: Office of the Secretary, HUD.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Through this notice HUD seeks comments from the public regarding a possible future proposed rule on non-mortgage investments to amend HUD's regulations at 24 CFR Part 81 governing the Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal National Mortgage Association (Fannie Mae) (both are known as Government Sponsored Enterprises or GSEs). Under their respective Charters, the GSEs have broad authority to invest their funds. The Secretary of HUD, however, has general regulatory power over the GSEs to ensure that the purposes of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, and the Federal Home Loan Mortgage Corporation Act are accomplished. HUD's current GSE regulations do not contain specific provisions concerning non-mortgage investments by the GSEs. Accordingly, HUD seeks the public's comments regarding possible regulations concerning these investments. Such comments may include, but should not be limited to, whether regulations should be issued governing the GSEs' non-mortgage investments and, if so, what specific requirements should be considered for such regulations including reporting of non-mortgage investments and any limits on such investments. This notice solicits public comments on this subject prior to publication of a possible proposed rule.

COMMENT DUE DATE: Deadline for comments on this Notice, including comments on the proposed information collection requirements: March 30, 1997.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-

0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each response submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. Eastern Time, weekdays at the above address.

FOR FURTHER INFORMATION CONTACT:

Janet Tasker, Director, Office of Government Sponsored Enterprise Oversight, Room 6154, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708-2224; or (for legal questions) Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Room 9262, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708-1550. (These are not toll free numbers.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339, which is a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The GSEs have authority to invest under their respective Charters. Fannie Mae's investment authority is contained in section 303(d) of its Charter Act (the Federal National Mortgage Association Charter Act, 12 U.S.C. 1716-1723h) and Freddie Mac's authority is based on provisions of its Charter Act at section 309(a) (the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451-1459).

The Secretary has general regulatory power over both GSEs. When Fannie Mae was first chartered as a GSE in 1968, the Secretary was given general regulatory power over Fannie Mae under its Charter Act, a power that the Senate report accompanying the Charter Act characterized as "plenary". S. Rep. No. 90-1123, at 82 n. 33 (1968). Section 731(c) of the Financial Institutions Reform Recovery and Enforcement Act (FIRREA), Public Law 101-73, Approved August 9, 1989, amended the Freddie Mac Charter Act at 12 U.S.C. 1451 to grant the Secretary general regulatory power over Freddie Mac.

In 1992, under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) (12 U.S.C. 4501-4641), Congress affirmed the Secretary's general regulatory power and conferred regulatory power on the Director of the Office of Federal Housing Enterprise Oversight for matters involving the GSEs' financial safety and soundness. FHEFSSA provides at 12 U.S.C. 4541:

Except for the authority of the Director of the Office of Federal Housing Enterprise

Oversight * * * and all other matters relating to the safety and soundness of the enterprises, the Secretary of Housing and Urban Development shall have general regulatory power over each enterprise and shall make such rules and regulations as shall be necessary and proper to ensure that this part and the purposes of the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act are accomplished.

Under the GSEs' Charters, the GSEs' purposes are to:

- (1) Provide stability in the secondary market for residential mortgages;
- (2) Respond appropriately to the private capital market;
- (3) Provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low-and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and
- (4) Promote access to mortgage credit throughout the Nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.¹

In enacting FHEFSSA, Congress affirmed that "[a]ll enterprise activities should conform with the Charter Act purposes of the enterprises." Senate Report on FHEFSSA, S. Rep. No. 102-282, at 15 (1992) ("Senate Report"). The Senate Report on FHEFSSA stated in part:

* * * [T]he authority to ensure that the purposes of the Charter Acts are accomplished gives the Director and Secretary the ability to prevent any activities that are clearly inconsistent with the purposes for which these enterprises were created and which they continue to serve * * *

Congress has indicated that HUD should not become involved in a GSE's "internal affairs such as personnel, salary, and other usual corporate matters except where the exercise of such powers is * * * otherwise necessary to ensure that the purposes of the Charter Act are carried out." S. Rept. No. 1123, 90th Cong. 2d. Sess. p. 82 (1968).

Earlier this year, as a result of GSE non-mortgage investment activities, Chairman James Leach of the House Committee on Banking and Financial Services requested that the Secretary review the GSEs' non-mortgage investments. Chairman Leach also asked the General Accounting Office to investigate these investments. GAO's

¹ Sections 301(b) of the Freddie Mac Act and 301 of the Fannie Mae Charter Act.

response to Chairman Leach concluded in part, in relation to the GSEs' investment powers, that HUD's regulatory authority "includes the power, at a minimum to determine whether an enterprise activity conflicts with the statutory mission and to respond appropriately." See *Housing Enterprises: Investment Authority, Policies and Practices*, B-277287, June 27, 1997, p. 14.

HUD understands that both GSEs have investment policies that specify permissible credit ratings, maturities and concentration limits. Non-mortgage investments constituted about 16 percent of the on-balance sheet assets of Fannie Mae and 11 percent of Freddie Mac's as of the end of 1996. Over half of Freddie Mac's non-mortgage investments and over 40 percent of Fannie Mae's were short-term investments in cash, cash equivalents, term federal funds and eurodollar deposits. The GSEs have indicated that their principal reasons for holding non-mortgage investments are cash management and as an investment vehicle to employ capital for future demand to fund residential mortgages.

Discussion

With respect to non-mortgage investments by the GSEs, the Secretary seeks to ensure that in carrying out its regulatory responsibility, the Government has the necessary tools to ascertain and ensure that the purposes of the Charter Acts are accomplished. Accordingly, HUD is considering issuing regulations that implement its programmatic responsibilities relative to the GSEs' non-mortgage investments to ensure that the purposes of the Charter Acts are accomplished. While the Secretary does not support or seek

intrusive or unnecessary regulation, it may be necessary to initiate further rulemaking to ensure that the GSEs' Charter purposes are accomplished. Accordingly, HUD is asking for comments on non-mortgage investments by the GSEs and options regarding the possible regulation of these investments as follows:

1. Need for Regulations Governing GSE Non-Mortgage Investments

- Are regulations governing the GSEs' non-mortgage investments necessary and appropriate?

2. Purposes of GSE Non-Mortgage Investments

- For what purposes is it legitimate for Fannie Mae or Freddie Mac to hold non-mortgage investments, consistent with their charter purposes?

3. Establishing Restrictions on GSE Non-Mortgage Investments

- Consistent with its oversight responsibilities, should HUD establish general restrictions on the GSEs' non-mortgage investments, for example, limiting the GSEs only to those investments which do not conflict with their ability to ensure that the purposes of the Charter Acts are accomplished or to those relatively short term investments which are necessary for liquidity and cash management purposes? If HUD were to establish general or even more specific restrictions, what should they provide?
- Should HUD establish numerical/percentage of asset limits on the GSEs' non-mortgage investments? Commenters should indicate the legal basis and justification in support of how particular limits suggested are appropriate to ensure that the purposes of the Charter Acts are accomplished.

4. Establishing Standards for GSE Non-Mortgage Investments

- What criteria would be reasonable and feasible for HUD to employ to distinguish mortgage-related investments from other investments?
- What would be a reasonable and feasible basis for HUD to use to limit the size (in dollars or relative to mortgage investments) and/or type of Fannie Mae's and Freddie Mac's short term and/or long term non-mortgage investment holdings?
- Should HUD prohibit the GSEs from borrowing for the purpose of reinvesting the proceeds in non-mortgage investments in order to profit on the net yield or spread? If so, how should a restriction be formulated and what would be its legal basis?

5. Monitoring of GSE Non-Mortgage Investments

- What methods should HUD employ to monitor the GSEs non-mortgage investment holdings?

6. Reporting of GSE Non-Mortgage Investments

- Under current rules, HUD may request reports from the GSEs whenever the Secretary determines that a report is appropriate to carry out its regulatory activities under the Charter Act or FHEFSSA. In order to ensure regular reports on GSE non-mortgage investments, what, if any, specific requirements should HUD establish in its reporting rules concerning non-mortgage investments by the GSEs?

Dated: December 19, 1997.

Andrew Cuomo,
Secretary.

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