



441 G St. N.W.
Washington, DC 20548

B-335802

December 15, 2023

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Federal Housing Finance Agency: Enterprise Regulatory Capital Framework –
Commingled Securities, Multifamily Government Subsidy, Derivatives, and Other
Enhancements*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Housing Finance Agency (FHFA) entitled “Enterprise Regulatory Capital Framework – Commingled Securities, Multifamily Government Subsidy, Derivatives, and Other Enhancements” (RIN: 2590-AB27). We received the rule on November 21, 2023. It was published in the *Federal Register* as a final rule on November 30, 2023. 88 Fed. Reg. 83467. The effective date is April 1, 2024, except for the amendments to sections 1240.36, 1240.37, and 1240.39, which are effective on January 1, 2026.

According to FHFA, this final rule amends several provisions in the Enterprise Regulatory Capital Framework for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac, and with Fannie Mae, each an Enterprise). FHFA stated that the rule includes modifications related to guarantees on commingled securities, multifamily mortgage exposures secured by government-subsidized properties, and derivatives and cleared transactions, among other items.

Enclosed is our assessment of FHFA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Clinton Jones
General Counsel
Federal Housing Finance Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL HOUSING FINANCE AGENCY
ENTITLED
“ENTERPRISE REGULATORY CAPITAL FRAMEWORK –
COMMINGLED SECURITIES, MULTIFAMILY GOVERNMENT SUBSIDY,
DERIVATIVES, AND OTHER ENHANCEMENTS”
(RIN: 2590-AB27)

(i) Cost-benefit analysis

In its submission to us, the Federal Housing Finance Agency (FHFA) indicated that it considered preparation of an analysis of the costs and benefits of this final rule to be not applicable.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

In this final rule, FHFA stated that it considered the impact of the rule under the Act. FHFA certified that the rule will not have a significant economic impact on a substantial number of small entities because the rule is applicable only to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which are not small entities for purposes of the Act.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FHFA is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory

Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FHFA is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On March 13, 2023, FHFA published a proposed rule. 88 Fed. Reg. 15306. FHFA received 23 public comment letters on the proposed rule from a variety of interested parties, including private individuals, trade associations, consumer advocacy groups, and financial institutions. According to FHFA, commenters in general were supportive of FHFA's proposed rule. FHFA responded to comments in this final rule.

Additionally, FHFA noted in the final rule that it also received comments on many issues outside the scope of this rulemaking. FHFA acknowledged the importance of these topics and stated that it will thoroughly consider the public's feedback on these issues when relevant rulemakings and policy decisions are under consideration.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FHFA determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

FHFA promulgated this final rule pursuant to various sections of title 12, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FHFA is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FHFA is not subject to the Order.