

gave rise. The Secretary has removed the definition of "significantly different programs" contained in § 81.52(e) of the proposed rule and will use only the statutory definition of new program. Although many believed the proposed definition included virtually all new GSE activities in new products, the definition was intended to clarify that the Secretary's authority extended only to genuinely new programs—and not to new products. Because the definition seems to have added to, not reduced, the confusion, the definition has been dropped.

The final rule also eliminates, in the definition of "new program" in § 81.2, the reference to *pilot or demonstration program(s)*. The proposed § 81.52(d) has been eliminated. That section provided that "grandfathered" programs remained subject to any limitations and requirements included in the Secretary's approval of the new programs. This concept is inherent in FHEFSSA's definition of "new program" and was superfluous. For similar reasons, the rule also eliminates specific reference to activities carried out under sections 309(h) of the Fannie Mae Charter Act or 303(d) of the Freddie Mac Act.

In lieu of the proposed requirement that the GSEs submit requests for programs that "reasonably raise questions" as to whether they are significantly different, the final rule maintains only, in § 81.52(d), the provision that the Secretary may request information about a program where the Secretary believes that the program may be subject to HUD review. Where, based on the information submitted, the Secretary determines such a request is warranted under the statute, the rule preserves the Secretary's authority to require that the GSE submit a request. This provision is consistent with the legislative intent that a new program that differs significantly "must be submitted for prior approval."⁶³

Freddie Mac commented that the GSEs have a "right * * * not to submit matters for approval that are beyond the scope of * * * the Act." Submissions for programs will only be required where the program is within the scope of FHEFSSA's review requirements. In the course of any such submission, the regulation invites the affected GSE to indicate in its response its views respecting whether the program is, in fact, subject to the Secretary's review.

Section 1322(c)(1) of FHEFSSA requires that a GSE "submit to the Secretary a written request for approval * * * that describes the program." This final rule sets out the precise

information the Secretary regards as necessary for the "description" of a new program. The information requested in § 81.53(b) of the final rule is the minimum necessary to carry out the Secretary's statutory duty. These are essential housekeeping requirements; they place no excessive burdens on the GSEs and are tailored to the principal goals of the Secretary's review: assurance that new program initiatives comport with the Charter Acts and are in the public interest. Under FHEFSSA, unless additional information is required, the Secretary must complete a new program review within 45 days. The housekeeping requirements will facilitate the review process and likely obviate the need for additional information.

With the substantial revisions that have been made, the final rule represents an effort to demonstrate that the Secretary will act in the least intrusive manner possible. The Secretary does not want to promulgate a regulation that imposes excessive burdens on the GSEs, or that addresses problems that are not expected to arise. The Secretary believes that new program requests can be acted upon in a less intrusive manner than the procedures set out in the proposed rule may have suggested.

The Secretary has reason to believe, based on experience, that the GSEs will act properly. In the event the Secretary believes that a GSE has undertaken a "new program" within the meaning of the statute without prior approval, FHEFSSA and the final rule contain adequate mechanisms for effective inquiry. Furthermore, the Secretary has adequate statutory and regulatory authority to revise this rule in the future, should events prove that a more detailed rule is necessary to carry out the Secretary's mandate.

Subpart E—Reporting Requirements

Sections 309(m) and (n) of the Fannie Mae Charter Act and 307(e) and (f) of the Freddie Mac Act require that the GSEs submit data about their mortgage purchases to the Secretary and submit reports to Congress and the Secretary concerning the GSEs' housing activities. FHEFSSA, at section 1326, mandates that the Secretary require each GSE "to submit reports on its activities to the Secretary as the Secretary considers appropriate." Section 1324 of FHEFSSA requires that the Secretary report to Congress by June 30 of each year on the activities of the GSEs. This final rule implements all of the applicable reporting requirements, to enable the Secretary to monitor the GSEs' activities and report to Congress appropriately.

In promulgating the proposed rule, the Secretary reviewed the reporting requirements for Fannie Mae, contained in the then-existing Fannie Mae regulation, which required Fannie Mae to submit numerous reports to the Secretary. The Secretary determined that a simpler, more effective and less burdensome reporting system should be instituted for both GSEs.

Mortgage Reports, Section 81.62

Although reporting requirements in the proposed rule were streamlined compared to earlier requirements imposed by the Secretary, Freddie Mac found the reporting requirements "excessive." In particular, Freddie Mac objected to submitting loan-level data on a quarterly basis. Freddie Mac asserted that quarterly loan-level data submissions were never contemplated by Congress and that Congress intended that a level of information equivalent only to that obtained from annual reporting under HMDA would be required. Fannie Mae argued that quarterly reports of loan-level data could potentially provide a misleading picture of performance.

Consistent with the Administration's efforts to streamline regulations and reduce reporting requirements, the Secretary has further reduced the frequency and the volume of data submissions. Section 81.62 requires the following information:

- First- and third-quarters reports—tables aggregating loan-level mortgage data; and
- Second- and fourth-quarter reports—tables aggregating loan-level mortgage data as well as loan-level data.

Thus, instead of requiring the submission of the loan-level data with each quarterly report, as proposed, the final rule now requires submission of loan-level data only with the second and fourth quarter reports. (The fourth quarter mortgage report also now serves as the Annual Mortgage Report and is designated as such.) In response to GSE comments, the final rule also clarifies that the quarterly mortgage reports need only include year-to-date data, not quarterly data plus year-to-date data as suggested in the proposed rule.

FHEFSSA charges the Secretary with responsibility for monitoring and enforcing the GSEs' compliance with the housing goals during the course of each year, and requires that the Secretary take action where a GSE fails—or there is a substantial probability that a GSE will fail—to meet any housing goal. The Secretary has determined that quarterly reports, with semiannual reporting of loan-level data, are essential to ensuring that the

⁶³ S. Rep. at 2.