

Products

A program differs from a product. As noted in the legislative history, "(o)nce a program is approved, Fannie Mae and Freddie Mac are expected and encouraged to develop a range of specific products under the umbrella of the new program. The Secretary's prior approval authority does not extend to the introduction of new products under an approved program."¹⁵⁶

Significantly Different

To determine whether a planned GSE program is "significantly different" from a GSE program that has been approved or authorized, and, therefore, requires the Secretary's approval, the proposed regulation provides that a program is significantly different if it materially differs from the GSE's other approved or authorized programs by entailing substantially greater risk or substantially expanding the GSE's role in the housing markets by involving new categor(ies) of borrowers, properties or other securities, borrowing purposes, or credit enhancements. New programs do not include new activities that are designed to refine approved or authorized programs by repackaging features of those programs, making technical improvements, or creating other nonmaterial variations.

Requested Comments on New Program Approval

In connection with new program approval, the Secretary seeks comments on the following questions:

(1) The Act defines "new program," generally, as a program that is significantly different from GSE programs previously approved or authorized. The Act does not define "program," "product," or "significantly different." Should these term(s) be defined in the final rule and, if so, how should the term(s) be defined?

(2) The Act requires the Secretary to approve a new program unless the program is not authorized by the GSE's Charter Act or the Secretary determines that the new program is not in the public interest. Should the final rule include factors that the Secretary will consider in determining whether a program is not in the public interest and, if so, what factors should be included?

Procedures

Requests from a GSE for new program approval must be submitted in writing and fully explain the program and whether the program is implemented under the authority of sections 305(a)

(1), (4), or (5) of the Freddie Mac Act or 302(b) (2)–(5) of the Fannie Mae Charter Act. Each program request shall include: An opinion from counsel setting forth the statutory authority for the new program; a good faith estimate of the anticipated dollar volume of the program over the short- and long-term; a full description of the purpose and operation of the proposed program, the market targeted by the program, the delivery system for the program, the effect of the program on the mortgage market, and material relevant to the public interest.

The Secretary and the Director (where the Director has new program approval authority) may, within 45 days of receiving a request for new program approval, determine that additional information from the GSE is needed to make a decision on the request.¹⁵⁷ When additional information is needed by the Secretary or the Director, the Secretary shall request such information from the GSE. The GSE must provide such information within 10 days of the Secretary's request and, if the GSE fails to do so, the Secretary may deny the request based on the GSE's failure.

The Secretary shall approve or disapprove new program requests within 45 days, or 60 days if additional information is requested from the GSE.¹⁵⁸ When the Secretary approves a new program, the Secretary shall provide written notice of the approval to the GSE. When a new program is not approved, the Secretary shall submit an explanatory report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.¹⁵⁹ If the Secretary fails to approve or disapprove a new program within 45 days (or 60 days where additional information is requested), the request shall be deemed approved.¹⁶⁰

Where the Secretary disapproves a new program request from a GSE under sections 305(a) (1), (4), or (5) of the Freddie Mac Act or 302(b) (2)–(5) of the Fannie Mae Charter Act and these regulations, the GSE may request within 30 days of the disapproval an opportunity to supplement the administrative record at a meeting with the Secretary or the Secretary's designee or in writing.¹⁶¹ A meeting will be scheduled within 10 days of a request. Within 10 days after written submission or a meeting, the Secretary will notify

the GSE whether the decision is withdrawn, modified or affirmed.

Where the Secretary disapproves a new program because it is not in the public interest or because the Director determined that the program would risk significant deterioration of the GSE's financial condition, the Act¹⁶² and these regulations provide the GSE with notice of and an opportunity for a hearing on the record concerning the disapproval as provided in subpart G.

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 also submit reports to Congress and the Secretary concerning the GSEs' housing activities. The Act requires that the Secretary report to Congress by June 30 of each year on the activities of the GSEs.¹⁶³ These regulations implement all of the applicable reporting requirements so that the Secretary is capable of appropriately monitoring the GSEs' activities and reporting to the Congress.

The current Fannie Mae regulations required Fannie Mae to submit numerous reports to the Secretary. The Secretary has reviewed these reporting requirements and determined that a simpler, more effective and less burdensome reporting system should be instituted for both GSEs.

Under the proposed regulations the following submissions would no longer be required from Fannie Mae and would not be instituted for Freddie Mac: A report on business activities (24 CFR 81.22), including a description of any planned or proposed new business activities and the GSE's competitive position in the marketplace; a general plan for the conduct of the GSE's secondary market operations, a special budget plan for the GSE's secondary market operations, a description of pending legal proceedings, and details on each executive officer's ownership of GSE securities, remuneration, and stock options (24 CFR part 81, App. B); a report on each auction of commitments (24 CFR 81.23(a)(1)); a report on investors purchasing Fannie Mae securities (24 CFR 81.23(a)(3)); a statement of the composition of the GSE's loan portfolio (24 CFR 81.23(a)(4)); a report on the characteristics of home loans purchased (24 CFR 81.23(a)(5)); a report on average yields of mortgage loans purchased (24 CFR 81.23(a)(6)); a report on the lender

¹⁵⁷ Section 1322(c)(2).

¹⁵⁸ Section 1322(c)(2).

¹⁵⁹ Section 1322(c)(2).

¹⁶⁰ Section 1322(c)(3).

¹⁶¹ See Section 1322(c)(4)(A).

¹⁶² Section 1322(c)(4)(B).

¹⁶³ Section 1324.

¹⁵⁶ H. Rep. at 55.