Banking and Finance Law Daily Wrap Up, GOVERNMENT SPONSORED ENTERPRISES—FHFA releases re-proposed Capital Rule for the Enterprises, (May 21, 2020)

Banking and Finance Law Daily Wrap Up

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The re-proposed Capital Rule seeks to enhance the quantity and quality of capital requirements from the 2018 proposal and to address pro-cyclicality concerns raised with the original proposal.

On May 20, 2020, the Federal Housing Finance Agency (FHFA) announced a re-proposed Capital Rule for Fannie Mae and Freddie Mac (the Enterprises). The recently proposed rule enhances the capital requirements in the previous notice of proposed rulemaking, published in July 2018. The enhancements strengthen the quality and quantity of regulatory capital, address concerns with the significant pro-cyclicality of the aggregate capital requirements of the 2018 proposal, and include requirements for the Enterprises to assess their own credit, market, and operational risks. The FHFA also released a Fact Sheet for the proposed rule. Treasury Secretary Steve Mnuchin and the American Bankers Association issued press releases in support of the proposal.

The FHFA's May 2020 joint notice of proposed rulemaking ("Enterprise Regulatory Capital Framework") establishes a new regulatory capital framework for the Enterprises, and is a re-proposal of the originally proposed rulemaking (published in July 2018), with some enhancements. As previously reported, the 2018 rule set forth a new framework for risk-based capital requirements and a revised minimum leverage capital requirement for the Enterprises (see *Banking and Finance Law Daily*, June 13, 2018). The FHFA explained that the enhancements in the new proposal preserve the mortgage risk-sensitive framework of the 2018 proposal, while increasing the quantity and quality of the Enterprises' regulatory capital and reducing the pro-cyclicality of the aggregate capital requirements. Together, the enhancements in the re-proposal ensure each Enterprise's safety and soundness and its ability to fulfill its statutory mission across the economic cycle—particularly during periods of financial stress.

Fact Sheet. The FHFA's Fact Sheet on the proposed rule explains that the proposal is a critical step in furtherance of FHFA's stated intention to responsibly end the conservatorships. It also explains the enhancements from the 2018 proposal. The summary of the proposed rule states that the proposed regulatory capital framework for the Enterprises would consist of risk-based capital and leverage ratio requirements, with capital buffers on certain of these requirements. The risk-based capital requirements would include requirements for credit risk, market risk, and operational risk. The leverage ratio requirements would provide a credible backstop to the risk-based capital requirements. An Enterprise's capital distributions and employment-based discretionary bonus payments would be subject to limits if the Enterprise does not maintain regulatory capital in excess of the prescribed capital buffer amounts.

Also, the proposed rule would also make conforming amendments to definitions in the FHFA's regulations for assessments and minimum capital and would also remove the Office of Federal Housing Enterprise Oversight's regulation on capital for the Enterprises.

Treasury, ABA statements. Treasury Secretary Steve Mnuchin issued a news release about the proposed rulemaking, stating that "[e]stablishing regulatory capital requirements for both GSEs represents an important step toward bringing the conservatorships to an end." The ABA also issued a press release, stating that the proposal "sets forth a necessary framework to establish appropriate capital levels that could lead to a detailed and thoughtful exit strategy from conservatorship for the GSEs."

Companies: Fannie Mae; Freddie Mac

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