



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

B-336125

March 27, 2024

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: Exceptions to Restrictions on Private Transfer Fee Covenants for Loans Meeting Certain Duty to Serve Shared Equity Loan Program Requirements*

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 “Exceptions to Restrictions on Private Transfer Fee Covenants for Loans Meeting Certain Duty to Serve Shared Equity Loan Program Requirements” (RIN: 2590-AB30). We received the rule on March 7, 2024. It was published in the *Federal Register* as a final rule on March 12, 2024. 89 Fed. Reg. 17711. The effective date is May 13, 2024.

According to FHFA, the final rule amends regulations that restrict the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks from purchasing, investing in, accepting as collateral, or otherwise dealing in mortgages on properties encumbered by certain types of private transfer fee covenants (PTFCs), or related securities, subject to certain exceptions (PTFC Regulation). FHFA states that the final rule establishes an additional exception that authorizes the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and Banks to engage in such transactions if the loans meet the shared equity loan program requirements for Resale Restriction Programs in FHFA’s Duty to Serve Underserved Markets Regulation (Duty to Serve Regulation), without regard to any household income limit.

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.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

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
“EXCEPTION TO RESTRICTIONS ON PRIVATE TRANSFER FEE COVENANTS
FOR LOANS MEETING CERTAIN DUTY TO SERVE
SHARED EQUITY LOAN PROGRAM REQUIREMENTS”
(RIN: 2590-AB30)

(i) Cost-benefit analysis

The Federal Housing Finance Agency (FHFA) did not discuss the costs and benefits in the rule. In its submission to us, FHFA indicated that it considered the preparation of an analysis of the costs and benefits of the rule to be not applicable. It did indicate the final rule would lead the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks to acquire shared equity loans in excess of \$102 million per year.

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

FHFA certified the final rule would not have a significant economic impact on a substantial number of small entities.

(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 requirements of 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 September 26, 2023, FHFA published a proposed rule. 88 Fed. Reg. 65827. FHFA received comments on the proposed rule from the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, nonprofit organizations, a trade association, and an individual. FHFA addressed the comments in the final rule.

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

FHFA determined the final rule does not contain information collection requirements subject to PRA.

Statutory authorization for the rule

FHFA promulgated the final rule pursuant to sections 4511, 4513, 4526, 4565, 4616, 4617, and 4631 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 requirements of the Order.

Executive Order No. 13132 (Federalism)

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