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# GOVERNMENT-SPONSORED ENTERPRISES

# A Framework for Strengthening GSE Governance and Oversight

Statement of David M. Walker
Comptroller General of the United States

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# Highlights

Highlights of GAO-04-269T, a testimony before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate

# GOVERNMENT-SPONSORED ENTERPRISES

# A Framework for Strengthening GSE Governance and Oversight

## Why GAO Did This Study

Congress established government sponsored enterprises (GSE)—such as Fannie Mae, Freddie Mac, the FHLBank System, and the Farm Credit System—to facilitate the development of mortgage and agricultural lending in the United States. Although the federal government does not explicitly guarantee the GSEs' approximately $4.4 trillion in financial obligations, the potential exists that the government would provide financial assistance in an emergency as it has done in the past. Recent financial reporting problems at Freddie Mac have raised concerns about the quality of the GSEs' corporate governance and regulatory oversight.

To assist Congress in reviewing the adequacy of GSE oversight, this testimony provides information on GSE corporate governance, regulatory oversight, and mission compliance measures.

## What GAO Recommends

GAO recommends several steps that GSEs, regulators, and Congress can take to strengthen GSE oversight. These steps include strengthening GSE corporate governance, creating a single housing GSE regulator, and establishing standards to measure GSE mission compliance.

www.gao.gov/cgi-bin/getrpt?GAO-04-269T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Thomas J. McCool at (202) 512-8678 or mccoolt@gao.gov.

## What GAO Found

GSEs should lead by example in connection with governance, accountability, integrity, and public trust issues. GSEs should strive to achieve model corporate governance structure, provide reasonable transparency of financial and performance activities, and adopt compensation arrangements that focus on both long-term and short-term results. However, GSE corporate governance has not always reflected best practices. For example, currently, the Chief Executive Officers (CEO) of Freddie Mac and Fannie Mae also serve as the chairmen of their respective GSE boards, which is not consistent with model governance standards that call for officers to work for an independent board. GAO notes that as part of its regulatory agreement, Freddie Mac has agreed to separate the position of CEO and the position of chairman within a reasonable period of time. However, Fannie Mae has yet to take this step. With respect to compensation arrangements, Freddie Mac's focus on short-term financial results as performance targets appears to have contributed to the GSE's recent financial reporting problems.

GSE regulators must be capable, credible, strong, and independent. However, the regulatory structure for the housing GSEs—Fannie Mae, Freddie Mac, and the FHLBank System—is fragmented with safety and soundness and mission oversight responsibilities divided among three regulators. A single housing GSE regulator offers many advantages over this fragmented structure including prominence in government, the sharing of technical expertise, and the ability to assess trade-offs between safety and soundness considerations and certain mission compliance activities, such as affordable housing initiatives. Although there are advantages of a single director model for the new housing GSE regulator, GAO believes on balance that a board or a hybrid board and director might make the most sense to oversee the GSEs' safety and soundness and mission oversight. To be effective, the single GSE regulator must also have all the regulatory oversight and enforcement powers necessary to carry out its critical responsibilities.

Because of a lack of clear measures, it is difficult for Congress, accountability organizations, and the public to determine whether the benefits provided by the GSEs' activities are in the public interest and outweigh their financial risks. Available evidence and data indicate that the housing GSEs have made, in some cases, progress in benefiting homebuyers. For example, it is generally agreed that Fannie Mae and Freddie Mac's activities have lowered mortgage interest rates, although there is debate over the degree of these benefits. However, it is not clear that the housing GSEs' large holdings of mortgage-backed securities benefit borrowers. There is also limited information as to the extent to which the FHLBank System's more than $500 billion in outstanding loans to financial institutions have facilitated mortgage lending.

Mr. Chairman, Mr. Ranking Member, and Members of the Committee:

I appreciate the opportunity to participate in today's hearing to discuss oversight of the government-sponsored enterprises (GSE), namely Fannie Mae, Freddie Mac, the Federal Home Loan Banks (FHLBanks), the Farm Credit System (FCS), and the Federal Agricultural Mortgage Corporation (Farmer Mac). I note that the GSEs had combined obligations, including mortgage-backed securities (MBS) and other debt obligations, of $4.4 trillion as of September 30, 2003, and, as I will explain in detail later, the potential exists that the federal government may choose to provide financial assistance to the GSEs in an emergency. Accounting and financial reporting problems related to earnings disclosed by Freddie Mac last year have raised several concerns about the company's management and board of directors as well as the effectiveness of regulatory oversight that is designed to protect taxpayers from the risks associated with the GSEs. Recently reported investment losses at the FHLBanks have also served to raise public concerns regarding the well-being of GSEs. These events prompted Congress to consider the need for meaningful reforms to help strengthen the oversight of GSEs. In my view, our past experience in the savings and loan industry, the recent accountability breakdowns in the private sector, and the importance of gaining public trust for regulatory agencies that oversee our financial institutions and our capital markets is directly relevant to the ongoing debate on appropriate regulatory oversight of GSEs.

It is clear that many parties have different views on what needs to be fixed and how to do it. My comments today are intended to frame GSE oversight issues broadly and provide our views on some of the questions and options that must be addressed to better oversee the GSEs going forward. Although my comments will largely focus on the housing GSEs—Fannie Mae, Freddie Mac, and the FHLBank System—given the themes of our discussion today, I will also use examples from the other GSEs to illustrate my points. We look forward to working with Congress to provide assistance in defining these issues, exploring various options, and identifying their implications in order to address any weaknesses that could serve to threaten confidence in our financial markets and that inhibit improvements in the current regulatory structure.

My testimony today is divided into two sections. In the first part, I will provide an overview of the GSEs and their missions, discuss the risks they pose to taxpayers and financial markets, and then I will lay out principles to help ensure effective governance and oversight of the GSEs. Second, I

will provide our views regarding the extent to which GSE governance and oversight structures are consistent with these important principles.

In summary, to ensure that the GSEs operate in a safe and sound manner, it is essential that effective governance, reasonable transparency, and effective oversight systems are established and maintained. In particular, the GSEs should lead by example in the area of corporate governance; GSE regulators must be strong, independent, and have necessary expertise; and GSE mission definitions and benefit measures need to be established. However, our work found that GSE corporate governance does not always reflect best practices; for example, Fannie Mae's Chief Executive Officer (CEO) serves as chairman and its Chief Operating Officer (COO) and Chief Financial Officer (CFO) both serve as vice chairmen of the board, which is not consistent with model governance theory that calls for an independent board and chair. I note that Freddie Mac's CEO is also the chairman of that company's board but Freddie Mac has agreed to split these functions in the future. Furthermore, the regulatory structure for the housing GSEs is fragmented and serious questions exist as to the capacity of GSE regulators to fulfill their responsibilities. In each of these areas, I will summarize steps that Congress, GSEs, and regulators can take to improve GSE governance and oversight. In particular, I believe that Congress should establish a single housing GSE regulator that would be governed by a board or a hybrid board and director and provided with the authorities necessary to carry out its mission.

To prepare for this testimony, we relied heavily on a substantial amount of work that we had done on GSEs and their regulatory oversight in the past, but we also reviewed our historical positions in light of the current regulatory structure and GSE activities. The attachment lists reports representing this body of work. In addition to reviewing our past work, we solicited views of officials from the Office of Federal Housing Enterprises Oversight (OFHEO), the Department of Housing and Urban Development (HUD), and the Federal Housing Finance Board (FHFB). We also reviewed financial data on the GSEs, best practices standards for corporate governance, and regulatory reports on such issues as the GSEs' effects on financial market stability. We conducted our work in Washington, D.C., between November 2003 and January 2004 in accordance with generally accepted government auditing standards.

## Overview of GSEs, Their Risks, and Principles for Effective Governance and Oversight

I would like to begin by summarizing the roles and responsibilities of the GSEs, describing their potential risks to taxpayers and the financial markets, and offering certain principles on governance and oversight to help ensure that the GSEs' activities are safe, sound, and consistent with their public missions.

### What are the GSEs and How Do They Carry Out Their Missions?

Over the past century, Congress established GSEs to address concerns that private financial institutions were not adequately meeting the credit needs of homebuyers and agricultural interests (see table 1). The GSEs are government-sponsored, privately owned and operated corporations whose public missions are to enhance the availability of mortgage and agricultural credit across the United States. It is also generally understood that the housing GSEs' public missions include the obligation to meet the needs of targeted groups of borrowers.[1] The GSEs generally carry out their missions by (1) borrowing funds in the capital markets and purchasing assets from financial institutions or making loans to the institutions or (2) securitizing assets and providing a credit guarantee to security holders. These activities may provide mortgage or real estate credit to homebuyers, businesses, or farmers at rates or conditions more favorable than those that would be available in the absence of these GSEs. It is important to note that the GSEs' debt and security offerings are not explicitly guaranteed or insured by the U.S. government.

[1]Through legislation, Congress has required the housing GSEs to serve the credit needs of targeted borrowers, such as low-income, urban, and rural homeowners. For example, Fannie Mae and Freddie Mac are required to meet housing goals established by HUD for the purchase of mortgages serving targeted groups. The FHLBanks are also required to provide grants or below market price advances for mortgages serving targeted groups through the Affordable Housing Program.

**Table 1: Overview Information on the GSEs as of September 30, 2003**

| Dollars in billions | | | |
|---|---|---|---|
| **GSE and year created** | **Financial obligations** | **Structure** | **Regulator** |
| Fannie Mae (1938) | $2,187[a] | For profit publicly traded | OFHEO - safety & soundness<br>HUD - mission |
| Freddie Mac (1970) | $1,388[a] | For profit publicly traded | OFHEO - safety & soundness<br>HUD - mission |
| FHLBank System (1932) | $716.9[b] | 12 District Banks<br>Member-owned cooperatives | FHFB |
| FCS (1916) | $97.1[c] | 5 banks and 99 Associations<br>Member-owned cooperatives | Farm Credit Administration |
| Farmer Mac (1987) | $7.2[d] | For profit publicly traded | Farm Credit Administration – Office of Secondary Market Oversight |

Sources: OFHEO, FHLBank System Office of Finance, Federal Farm Credit Banks Funding Corporation, and Farm Credit Administration (FCA).

[a]Includes short- and long-term debt and MBS held by investors. Freddie Mac data are as of December 31, 2002, and are subject to change as Freddie Mac is currently restating its 2002, 2001, and possibly 2000 financial statements.

[b]FHLBank System consolidated obligations.

[c]Total liabilities, including securities, bonds, and other liabilities.

[d]On-balance sheet liabilities and off-balance sheet liabilities, including agricultural mortgage-backed securities (AMBS) held by investors.

Let me now briefly discuss the missions and activities of each of the GSEs:

- Fannie Mae and Freddie Mac's mission is to enhance the availability of mortgage credit across the nation during both good and bad economic times by purchasing mortgages from lenders (banks, thrifts, and mortgage lenders) that use the proceeds to make additional mortgages available to homebuyers. Most mortgages purchased by Fannie Mae and Freddie Mac are conventional mortgages, which have no federal insurance or guarantee. The companies' mortgage purchases are subject to a conforming loan limit that currently stands at $333,700 for a single-family home in most states. Although Fannie Mae and Freddie Mac hold some mortgages in their portfolios that they purchased, most

mortgages are placed in mortgage pools to support MBS. Fannie Mae and Freddie Mac issued MBS are either sold to investors (off-balance sheet obligations) or held in their retained portfolios (on-balance sheet obligations). Fannie Mae and Freddie Mac guarantee the timely payment of interest and principal on MBS that they issue.

- The 12 FHLBanks traditionally made loans—also known as advances—to their members (typically banks or thrifts) to facilitate housing finance and community economic development. FHLBank members are required to collateralize advances with high quality assets such as single-family mortgages. More recently, the FHLBanks initiated programs to purchase mortgages directly from their members and hold them in their retained portfolios. This process is similar to Fannie Mae and Freddie Mac's traditional business activities, although the FHLBanks do not currently have the authority to securitize mortgages.

- FCS, of which Farmer Mac is an independent institution, is a nationwide network of borrower-owned financial institutions and specialized service organizations. FCS consists of six Farm Credit Banks and one Agricultural Credit Bank, which provide funding and affiliated services to locally owned Farm Credit associations and numerous cooperatives nationwide. Among other activities, FCS provides credit and related services to farmers, ranchers, producers, and rural homeowners.

- Farmer Mac's mission is to provide for a secondary marketing arrangement for agricultural real estate and rural housing loans subject to its underwriting standards. Farmer Mac purchases mortgages directly from lenders for cash and purchases bonds from agricultural lenders. Farmer Mac securitizes mortgages and issues AMBS and, like Fannie Mae and Freddie Mac, guarantees the timely payment of interest and principal on these securities. Farmer Mac holds most of the AMBS that it issues in its retained portfolio.

## What are the Risks of the GSEs?

As a result of their activities, the GSEs' outstanding debt and off-balance sheet financial obligations are large. The GSEs' financial obligations were $4.4 trillion as of September 30, 2003. By comparison, the U.S. Treasury had $6.8 trillion in total obligations for the same date. The GSEs face the risk of losses primarily from credit risk, interest rate risk, and operational

risks.[2] Although the federal government explicitly does not guarantee the obligations of the GSEs, it is generally assumed on Wall Street that assistance would be provided in a financial emergency. In fact, during the 1980s the federal government provided financial assistance to both Fannie Mae and FCS when they experienced difficulties due to sharply rising interest rates and declining agricultural land values, respectively. The potential exists that Congress and the Executive Branch would determine that such assistance was again necessary in the event that one or more of the GSEs experienced severe financial difficulties. Because the markets perceive that there is an implied federal guarantee on the GSEs' obligations, the GSEs are able to borrow at interest rates below that of private corporations, which—as I discussed earlier—allows them to extend credit to financial institutions at favorable rates.

The GSEs also pose potential risks to the stability of the U.S. financial system. In particular, if Fannie Mae, Freddie Mac, or the FHLBank System were unable to meet their financial obligations, other financial market participants depending on payments from these GSEs, may in turn become unable to meet their financial obligations. This risk, called systemic risk, is often associated with the housing GSEs because of the sheer size of their financial obligations. For example, as discussed in OFHEO's 2003 report on systemic risk, if either Fannie Mae or Freddie Mac were to become insolvent, financial institutions holding the enterprise's MBS could be put into a situation where they could no longer rely on those securities as a ready source of liquidity.[3] Depending on the response of the federal government, the financial health of the banking segment of the financial services industry could decline rapidly, possibly leading to a decline in economic activity. As another example, derivatives counterparties holding contracts with a financially troubled GSE could realize large losses if the GSE were no longer able to meet its obligations. If such a hypothetical event were to occur, widespread defaults could occur in derivatives markets.

[2]Credit risk is the possibility of financial loss resulting from default by homeowners on housing assets that have lost value; interest rate risk is the risk of loss due to fluctuations in interest rates; and operational risk includes the possibility of financial loss resulting from inadequate or failed internal processes, people and systems, or from external events.

[3]Office of Federal Housing Enterprises Oversight. *Systemic Risk: Fannie Mae, Freddie Mac, and the Role of OFHEO*. Washington, D.C: February 4, 2003.

## How Can GSE Risks Be Mitigated?

To prevent the need for the federal government ever to have to provide financial support to a GSE and to minimize the risks of financial instability, it is critical to ensure that proper corporate governance, reasonable transparency, and effective oversight systems are in place. There are several lines of defense to ensure that GSEs' activities are conducted in a safe and sound manner including management, boards of directors, auditors, and regulators. As we have seen in recent private sector instances such as Enron and Worldcom, these critical lines of defense can and do fail. Consequently, the private sector, Congress, and regulators have initiated actions—such as the passage and implementation of the Sarbanes-Oxley Act—to ensure that the risk of such failures of governance and oversight are minimized. In my view, it is all the more important that strong safeguards are established for the GSEs because such institutions are not subject to the same degree of market discipline as other privately run businesses. As a result of the perception of an implied guarantee of GSE obligations, customers and creditors may be less willing to monitor the companies' risk-taking, which could encourage managers to take on excessive risks.

I would now like to offer, on the basis of both my own experience and past GAO work, several specific and pragmatic principles to ensure effective GSE governance and oversight:

### The GSEs Should Lead by Example in Terms of Corporate Governance and Accountability

Not only should GSEs be sensitive to good governance but it is all the more important they lead by example in connection with accountability, integrity, and public trust. In particular, GSEs should strive to have a truly independent board, compensation arrangements consistent with their public mission and private shareholder obligations, and appropriate transparency of their financial activities. Under model governance theory, the board of directors works in the best interest of the shareholders and the CEO works for the board. Board members should be independent and be able to provide strategic advice to management in order to help maximize shareholder value. The board should also help manage risk to shareholders and have a clear responsibility to hold management accountable for results both currently and over time. I note that in the context of the GSEs, boards could also have a responsibility to ensure that the GSEs' activities fulfill their public missions. In some cases, there can be a tension between maximizing shareholder value and fulfilling public missions. GSE boards and executives must have the requisite commitment and talent to respond to this challenge.

To adhere to model governance theory, it is also important for the board to ensure that overall executive compensation is aligned with

achievements related to the company's long-term strategic objectives and less on short-term accomplishments such as quarterly or annual earnings. Further, it is not just the total amount of compensation but the form and structure of executive compensation arrangements that is important as well. Finally, transparency through timely and reliable financial and performance information and reasonable disclosures is necessary to enable capital markets and investors to understand related values and risks associated with the GSEs. Market discipline works best when firms fully and publicly disclose their financial obligations and activities.

## The GSEs Require a Strong, Independent, and Capable Regulatory System

A regulatory system of GSE oversight must have the necessary strength, independence, and capability to protect against the significant risks and potential costs to taxpayers posed by the GSEs. We have consistently supported and continue to believe in the need for the creation of a single regulator to oversee both safety and soundness and mission of the housing GSEs, which, as I will describe later, are currently divided among OFHEO, HUD, and FHFB.[4] A single regulator could be more independent and objective than separate regulatory bodies and could be more prominent than either one alone. Although the housing GSEs operate differently, the risks they manage and their missions are similar. We believe that valuable synergies could be achieved and expertise in evaluating GSE risk management could be shared more easily within one agency. In addition, we believe that a single regulator would be better positioned to oversee the GSEs' compliance with mission activities, such as special housing goals and any new programs or initiatives any of the GSEs might undertake. This single regulator should be better able to assess these activities' competitive effects on all three housing GSEs and better able to ensure consistency of regulation for GSEs that operate in similar markets.

Further, a single regulator would be better positioned to consider potential trade-offs between mission requirements and safety and soundness considerations, because such a regulator would develop a fuller understanding of the operations of these large and complex financial institutions. Some critics of combining safety and soundness and mission have voiced concerns that doing so could create regulatory conflict for the regulator. However, we believe that a healthy tension would be created that could lead to improved oversight. The trade-offs between safety and

[4]See U.S. General Accounting Office, *Government-Sponsored Enterprises: Advantages and Disadvantages of Creating a Single Housing GSE Regulator*, GAO/GGD-97-139 (Washington, D.C.: July 9, 1997).

soundness and compliance with mission requirements could be best understood and accounted for by having a single regulator that has complete knowledge of the GSEs' financial condition, regulates the mission goals Congress sets, and assesses efforts to fulfill them.

To be effective, the single regulator must have all the powers, authorities, and technical expertise necessary to oversee the GSEs' operations and compliance with their missions.

### Measures Must Be Established to Help Ensure That the GSEs' Benefits Outweigh the Financial Risks That Their Activities Pose to Taxpayers

Without clearly defined measures of the GSEs' benefits, it is not possible for Congress, accountability organizations, and the public to determine whether the federal government should be subject to the financial risks associated with the GSEs' activities. I acknowledge that developing such measures may prove challenging for several reasons. First, isolating the GSEs' effects on mortgage and agricultural credit markets is a complex and technical undertaking. Second, the GSEs' financial activities have evolved over the years and become increasingly sophisticated, which further complicates any analysis of the GSEs' benefits and costs. Third, in some cases, there is a lack of measurable mission-related criteria that would allow for a meaningful assessment of the GSEs' mission achievement or whether the GSEs' activities are consistent with their charters. Nevertheless, past actions by Congress and regulators demonstrate that developing such quantifiable measures is possible. For example, in 1992, Congress required HUD to set numeric housing goals for Fannie Mae and Freddie Mac to help ensure that their mortgage purchases served the needs of low-income households as well as other targeted groups.

## The GSEs' Corporate Governance, Regulatory Oversight, and Mission Compliance Reporting Can Be Strengthened

Now that I have laid out the risks associated with the GSEs and principles for effective governance and oversight, I would like to turn my attention to how the current system compares with those principles. While there is some positive information to report about the GSEs, there are also weaknesses in the areas of corporate governance, regulatory oversight, and mission compliance reporting. In each of these areas, there are steps we believe Congress, the regulators, or GSEs can take to address weaknesses in GSE governance and oversight that we have identified.

## GSE Corporate Governance Practices Can Be Improved

The GSEs' corporate governance practices are not fully consistent with the principles that I previously mentioned. The first principle I discussed is independence of the board and the role of the board of directors. There are instances where the GSEs can further their efforts in ensuring board independence. To illustrate:

- Like CEOs at many other publicly traded companies, the CEO of Fannie Mae and the CEO of Freddie Mac currently serve as chairman of their respective boards of directors. In addition, Fannie Mae's COO and CFO both serve as vice chairmen of the board. All too frequently, such individuals will have significant influence over who is asked to join the board and who is asked to leave it. OFHEO, in its special examination of Freddie Mac (OFHEO report), recommended that Freddie Mac should separate the functions of the CEO and the board chairman to improve the effectiveness of the board of directors and Freddie Mac has agreed to do so.[5] I also note that OFHEO recently submitted proposed corporate governance reforms to the Office of Management and Budget that would require the GSEs to separate the CEO and chair positions; and

- A recent FHFB study on board governance of the FHLBanks found that the selection process for board and committee chairpersons and assignment of committee memberships at some FHLBanks lacked transparency or inclusiveness.[6] The study concluded that committee selection processes relying on only one person or the recommendations of senior management may diminish the independence of directors. FHFB recommended the FHLBanks strengthen their boards of directors by using a transparent and inclusive selection process.

In practice, GSE boards may face difficulties in complying with modern governance standards because of statutory and regulatory requirements regarding the structure, selection, and composition of such boards. For example,

- Fannie Mae and Freddie Mac's boards include five seats that are appointed annually by the President, serve one-year terms, and

[5]Office of Federal Housing Enterprises Oversight. *Report of the Special Examination of Freddie Mac*. December 2003.

[6]Federal Housing Finance Board. *Report of the Horizontal Review of Board Governance of the Federal Home Loan Banks*. June 2003.

represent various interests including the real estate industry, the mortgage lending industry, and consumer interests.[7] Treasury has proposed eliminating the presidentially appointed directors at Fannie Mae and Freddie Mac because the perceived roles of these directors contradict best practices of corporate governance.[8] OFHEO agrees with Treasury's position because it has found that the appointed members do not play meaningful roles on the GSEs' boards. While there may be reasons to eliminate these positions, should Congress decide to retain them, it should consider (1) lengthening the terms of the appointed directors so that they have sufficient time to understand the GSEs' complex activities, (2) establishing criteria to ensure that qualified individuals serve on the boards who have expertise in financial activities and understand the GSEs' mission responsibilities, and (3) establishing fiduciary responsibilities to serve the special public purpose of the GSE.

- I would also like to point out that FHFB appoints at least 6 directors, known as public interest directors, to serve on the board of the FHLBanks, whose boards each consist of at least 14 members. We believe that a selection process that uses a regulator to select the directors of the regulated entities could jeopardize the independence of those directors as well as FHFB.

- As another example, our recent study of Farmer Mac provides an illustration of how congressionally established board structure can complicate a GSE's compliance with board independence requirements. We noted that the statutory structure of the Farmer Mac board requires a majority of the directors to come from institutions that utilize Farmer Mac's services.[9] This raises questions as to the independence of that board.

[7]As specified in their charters, Fannie Mae and Freddie Mac each have 18-member boards of directors. The President appoints 5 of the directors at each company, while shareholders elect the other 13. Board members are elected or appointed to 1-year terms.

[8]*Testimony of Secretary John W. Snow Before the U.S. Senate Committee on Banking, Housing and Urban Affairs*. Washington, D.C.: October 16, 2003. He stated that "…The Administration is committed to make sure that corporate governance … remain strong and effective. That requires that there be great clarity that the people running large companies are there to serve the interests of the shareholders and that their incentives and loyalties be clearly aligned in this way."

[9]U.S. General Accounting Office, *Farmer Mac: Some Progress Made, but Greater Attention to Risk Management, Mission, and Corporate Governance Is Needed*. GAO-04-116 (Washington, D.C.: Oct 16, 2003).

In the area of compensation, there are indications that the structure of executive compensation arrangements and the process of determining compensation levels at the GSEs are not in line with best practices for corporate governance. As examples,

- According to the OFHEO report, approximately 54 percent of the total cash compensation (salaries, bonuses, and other compensation) paid by Freddie Mac to executive officers for performance in 2001 was based on corporate performance for that year. The study found that the compensation of senior executives, in particular, the size of the bonus pool, was tied, in part, to meeting or exceeding annual specified earnings per share targets. OFHEO concluded that the importance of achieving such targets contributed, in part, to the improper accounting and management practices of the GSE. As such, OFHEO recommended that Freddie Mac should develop financial incentives for executives and employees based on long-term goals.

- Our study at Farmer Mac also identified an aggressive stock option vesting plan whereby stock options for employees and directors were fully vested within 2 years. By comparison, companies have average vesting periods of 4 to 5 years. Farmer Mac has since changed its vesting program to be more aligned with those of other companies.

Finally, in my view, adequate transparency is important because the housing GSEs engage in complex transactions, such as securitizations, guarantees, and hedging of risk which introduce many financial reporting complexities. With the exception of Farmer Mac, GSEs are exempt from the securities laws, and are not required to file disclosure documents with the Securities Exchange Commission (SEC) with respect to their securities issuances. Nevertheless, in October 2000, Fannie Mae and Freddie Mac adopted six voluntary commitments aimed at increasing their financial disclosures. More recently, Fannie Mae has registered its stock with SEC on a voluntary basis and Freddie Mac has stated its intention to do the same. Although financial disclosure may improve transparency, its impact on the GSEs and their customers or funding parties may be limited if the GSEs are perceived to have implicit government backing. For this reason, while market discipline can play a role in curbing risky behavior by GSEs, it also has its limitations. Effective oversight thus takes on more importance as a means for limiting inappropriate risk-taking behavior by the GSEs. Now let me move on to the last line of defense, that is, oversight by regulators.

## Housing GSE Regulatory Structure Does Not Ensure Effective Oversight

Unfortunately, the current housing GSE regulatory structure is fragmented, which limits the federal government's ability to oversee the GSE's activities. Congress now has the opportunity to rationalize the current GSE regulatory structure through the creation of a single regulator that would oversee the housing GSEs' safety and soundness and mission activities. Congress should also ensure that the new GSE regulator has the authorities necessary to carry out its critical responsibilities.

### GSE Regulatory Structure Can Be Consolidated

Although the housing GSEs share similar risks and missions, there are three regulators overseeing either their safety and soundness, their missions, or both. Currently, OFHEO regulates Fannie Mae and Freddie Mac on matters of safety and soundness, while HUD is the mission regulator. FHFB serves as the safety and soundness and mission regulator of the FHLBanks. Available evidence raises questions about the capacity of the current regulatory structure to effectively monitor the GSEs' safety and soundness and mission compliance. To illustrate:

- OFHEO did not identify the substantial financial accounting problems at Freddie Mac at an early stage. In fact, OFHEO's 2001 and 2002 examinations of Freddie Mac gave high marks to the GSE in such relevant areas as corporate governance and internal controls, despite the widespread deficiencies later identified in these areas. OFHEO's current director has stated that the agency plans to strengthen its examination program, create an office of the chief accountant, and elevate the important area of corporate accounting into its oversight process.

- As of July 2002, FHFB employed just 10 examiners to review the increased risks and complexity of the 12 FHLBanks and the agency's reviews of key activities—such as internal controls—were limited.[10] Although FHFB has initiated a program to triple the number of examiners to 30 by the end of FY 2004 and has revised its examination program, it is too soon to judge the effectiveness of FHFB's initiatives.[11] For example, as FHFB continues the process of developing a sufficient and capable force of examiners, it must cope with the fact that several FHLBanks reported losses or weak financial results in late FY 2003 and

[10]The FHLBanks direct mortgage purchase programs expose the banks to interest rate risk and increasingly sophisticated strategies—such as the use of derivatives and hedging techniques—are necessary to manage these risks.

[11]By late 2003, FHFB had a staff of 22 examination professionals, according to FHFB officials.

some FHLBanks continue to expand their mortgage purchase programs.

- HUD officials we contacted said that the department lacks sufficient staff and resources necessary to carry out its GSE mission oversight responsibilities. HUD officials said that although the GSEs' assets have increased nearly six-fold since 1992, HUD's staffing has declined by 4,200 positions and GSE oversight—which now consists of about 13 full-time positions—must compete with other department priorities for the limited resources available. The President's 2005 budget includes a proposal that would allow HUD to assess Fannie Mae and Freddie Mac for the cost of its mission oversight.[12] I also note that HUD (1) has not proposed a rule to ensure that the GSEs' nonmortgage investments (such as long-term corporate debt) are consistent with their housing mission as the department committed to do in response to a 1998 GAO report and (2) it is not clear that HUD has the expertise necessary to review sophisticated financial products and issues, which are associated with nonmortgage investments and new program applications.[13]

As I stated previously, a single GSE regulator offers many advantages over the fragmented structure that exists today including prominence in government, the sharing of technical expertise, and the ability to assess trade-offs between safety and soundness considerations and certain mission compliance activities.

In determining the appropriate structure for a new GSE regulator, we note that Congress has authorized two different structures for governing financial regulatory agencies: a single director and board. Among financial regulators, single directors head the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) and OFHEO while boards or commissions run FHFB, SEC, and the Board of Governors of the Federal Reserve System, among others. The single director model has advantages over a board or commission; for example, the director can make decisions without the potential hindrance of having to consult with or obtain the approval of other board members.

[12]HUD's GSE mission oversight expenses are funded through the appropriations process.

[13]U.S. General Accounting Office, *Government Sponsored Enterprises: Federal Oversight Needed for Nonmortgage Investments*, GAO/GGD-98-48 (Washington, D.C.: March 11, 1998).

In our previous work, however, we have stated that a "stand-alone" agency with a board of directors would better ensure the independence and prominence of the regulator and allow it to act independently of the influence of the housing GSEs, which are large and politically influential. A governing board may offer the advantage of allowing different perspectives, providing stability, and bringing prestige to the regulator. Moreover, if the board included the secretaries of Treasury and HUD or their designees, the potential exists that safety and soundness and housing mission compliance concerns would both be represented. We are mindful, though, based on recently completed work, of some of the disadvantages of a stand-alone agency with a board of directors that is divided along party lines.[14] Tensions and conflicts between board members potentially diminish some of these benefits.

I would note that in other regulatory sectors—besides financial regulation—Congress has established alternative board structures that could be considered as potential models for the new GSE regulator. One such alternative structure would be to have a presidentially appointed and Senate confirmed director, and a board of directors comprised of the secretaries from relevant executive branch agencies, such as Treasury and HUD. Board members being from the same political party could lessen some of the tensions and conflicts observed at boards purposefully structured to have a split in membership along party lines. A board comprised of members all from the same political party may, though, not benefit from different perspectives to the same extent as a board with members from different political parties. Therefore, an advisory committee to the regulator could be formed, to include representatives of financial markets, housing, and the general public. This advisory committee could also be required to have some reasonable representation from different political parties.

I would now like to comment on issues surrounding the potential funding arrangements for a new housing GSE regulator. Similar to FHFB, OCC, and OTS, OFHEO funds its operations through assessments on its regulated entities, Fannie Mae and Freddie Mac. However, unlike these agencies that are exempt from the appropriations process, OFHEO can only collect the assessments when approved by an appropriations bill and

[14]See U.S. General Accounting Office, *Financial Regulation: Review of Selected Operations of the Federal Housing Finance Board*, GAO-03-364 (Washington, D.C.: Feb. 28, 2003).

at a level set by its appropriators. While testifying on GSE regulatory reform, the director of OFHEO noted that the appropriations process has placed severe constraint on OFHEO's operations and has hindered its ability to hire additional resources it needs to strengthen its oversight.[15]

Exempting the new GSE regulator from the appropriations process would provide the agency the financial independence necessary to carry out its responsibilities. More importantly, without the timing constraints of the appropriations process, the regulator could more quickly respond to budgetary needs created by any crisis at the GSEs. However, being outside the appropriations process can create trade-offs. First, while the regulator will have more control over its own budget and funding level, it will lose the checks and balances provided by the federal budget and appropriations processes or the potential reliance on increased appropriations during revenue shortfalls. As a result, the regulator would need to establish a system of budgetary controls to ensure fiscal restraint. Second, removing the regulator from the appropriations process could diminish congressional oversight of the agency's operations. This trade-off could be mitigated through increased oversight by the regulator's congressional authorizing committees, such as a process of regular congressional hearings on the new GSE regulator's operations and activities.

## Congress Should Ensure That the New Housing GSE Regulator Has Adequate Enforcement Authorities

The new GSE regulator must have adequate powers and authorities to address unsafe and unsound practices, respond to financial emergencies, and ensure that the GSEs comply with their public missions. In our previous work, we have stated that each GSE housing regulator administers its own statutory scheme and these schemes contain various types of powers and authorities, which although similar, are not identical.[16] Further, the GSE housing regulators' powers and authorities differ from that of banking regulators in key areas. The following describes some of

[15]*Statement of the Honorable Armando Falcon, Jr., Director of OFHEO before the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises Hearing on The Office of Federal Housing Enterprise Oversight's December Report of the Special Examination of Freddie Mac*. Washington, D.C.: January 21, 2004.

[16]See U.S. General Accounting Office, *Comparison of Financial Institution Regulators' Enforcement and Prompt Corrective Action Authorities*, GAO-01-322R (Washington, D.C.: Jan. 31, 2001).

these differences, which Congress may wish to consider in determining the appropriate authorities for a new GSE housing regulator:

- Unlike bank regulators and FHFB, OFHEO's (1) authority to issue Cease and Desist Orders does not specifically list an unsafe and unsound practice as grounds for issuance and (2) powers do not include the same direct removal and prohibition authorities applicable to officers and directors;

- Bank regulators have prompt corrective authorities that are arguably more robust and proactive than those of OFHEO and FHFB. These authorities require that bank regulators take specific supervisory actions when bank capital levels fall to specific levels or provide the regulators with the option of taking other actions when other specified unsafe and unsound actions occur.[17] Although OFHEO has statutory authority to take certain actions when Fannie Mae or Freddie Mac capital falls to predetermined levels, the authorities are not as proactive or broad as those of the bank regulators.[18] OFHEO has also established regulations requiring specified supervisory actions when unsafe developments are identified that do not include capital, but OFHEO's statute does not specifically mention these actions. FHFB's statute does not establish prompt corrective action scheme, but FHFB officials believe they have all the authority necessary to carry out their safety and soundness responsibilities; and

- Unlike bank regulators—-which can place insolvent banks into receivership—-and FHFB, which can take actions to liquidate an FHLBank, OFHEO is limited to placing Fannie Mae or Freddie Mac into a conservatorship.[19] I note that should Congress decide to grant the

[17]Capital can be a lagging indicator of unsafe and unsound conditions at financial institutions. Declining asset quality is an unsafe and unsound condition that may be identified months or years before capital declines.

[18]For example, bank regulators are required to take specified regulatory actions at earlier stages of capital depletion than is OFHEO. Bank regulators are also required to initiate four supervisory actions if an institution is undercapitalized—including restricting asset growth—while OFHEO is mandated to take only two actions (not including restricting asset growth).

[19]According to OFHEO officials, a receivership is empowered to take over the assets and operate an entity, assuming all of its powers and conducting all of its business as well as removing officers and directors. A receiver may place the failed institution into liquidation and sell its assets. While a conservator may also remove officers and directors of an entity, a conservator is typically appointed to conserve rather than dispose of assets.

new GSE regulator receivership authority, it should task the regulator to develop rules and procedures that would reduce the adverse impacts that a GSE liquidation could have on housing finance and the stability of financial markets.

In summary, I believe Congress can review the regulatory authorities at OFHEO, FHFB, and bank regulators and, where appropriate, ensure that the new regulator has sufficient authorities to carry out its critical responsibilities.

## Measures Have Not Been Established to Determine Whether the GSEs' Benefits Outweigh Their Risks

In important cases, it is clear that the GSEs have fulfilled the public missions for which they were initially created. Since the establishment of Fannie Mae and the FHLBank System in the 1930s, for example, the nation's mortgage finance market has progressed from a regionally based system characterized by periodic credit shortages to a nationwide and liquid system. Furthermore, it is generally agreed that Fannie Mae and Freddie Mac's mortgage purchase activities have lowered the interest rates on qualifying mortgages below what they otherwise would be. In a 1996 report, we estimated that Fannie Mae and Freddie Mac's activities lowered the rate on qualifying mortgages by about 15 to 35 basis points or a monthly savings of between $10 and $25 on a typical mortgage of $100,000.[20] Subsequently, federal agencies and researchers, academics, and the GSEs have initiated studies that have estimated the extent of the benefits provided by the GSEs' activities and the recipients of such benefits (i.e., homebuyers vs. investors and management), which have reached differing conclusions. Additional studies may be needed to more precisely estimate the extent to which the GSEs' activities benefit homebuyers.

In other areas, however, there is substantially greater uncertainty regarding the benefits of the GSEs' activities and more research is needed to clarify these issues. Although the GSEs have expanded rapidly and become more complex in recent years, for example, it is not always clear how the GSEs' growth and complexity have enhanced their public missions. For instance, at year-end 2002, Fannie Mae and Freddie Mac held a combined $1.4 trillion of mortgage assets in their retained portfolios, including MBS, while the FHLBanks hold about a combined $100 billion of

[20]U.S. General Accounting Office, *Housing Enterprises: Potential Impacts of Severing Government Sponsorship*, GAO/GGD-96-120 (Washington, D.C.: May 13, 1996).

MBS. Although holding mortgage assets in their portfolios may enhance the profitability of the GSEs, it also exposes them to interest rate risk, which requires the use of sophisticated financial strategies—such as the use of hedging which includes the use of derivatives—to manage effectively. In addition, derivatives may also be used by financial institutions to take positions on interest rate movements, which can enhance their profitability but which is also inherently risky. Over the years, questions have been raised as to whether the GSEs' portfolio investments in MBS generate benefits to borrowers.

Additionally, the lines that initially existed between Fannie Mae and Freddie Mac on the one hand and the FHLBank System on the other have blurred. In addition to making advances to their members, for example, FHLBanks have now purchased about $108 billion in mortgages directly from their members, which is essentially Fannie Mae and Freddie Mac's traditional business. Although the FHLBanks' mortgage purchases may enhance competition in the market for secondary mortgage purchases, they can just as easily raise questions as to whether there is a need for an additional GSE performing essentially the same mission and incurring similar risks.

In some cases, the absence of specific criteria and guidance complicates efforts to assess the benefits of the GSEs' activities. Our recent work concluded that Farmer Mac's statute contains broad mission purpose statements and lacks specific or measurable criteria that would help determine whether the GSE is meeting its policy goals. Farmer Mac's nonmission-related assets—such as long-term corporate bonds—declined from 66 percent of assets in 1997 to 37 percent in 2002. However, the composition and criteria for nonmission investments could potentially lead to investments that are excessive in relation to Farmer Mac's financial operating needs or otherwise would be inappropriate to the statutory purpose of Farmer Mac. We suggested that Congress should consider establishing clearer mission goals for Farmer Mac with respect to the agricultural and real estate market to allow a determination as to whether Farmer Mac had achieved its public policy goals.

Finally, I would also like to point out that there are other limitations in the evidence and research on the benefits provided by the GSEs' activities. The following are some examples that we have identified:

- There is limited information as to the extent to which the FHLBank System's more than $500 billion in outstanding advances, as of mid-year 2003, have facilitated mortgage availability. Although anecdotal

information is available on the benefits of FHLBank advances, studies using quantitative analysis to assess the impacts of FHLBank advances on housing and community development have not been produced.

- There is limited information available on the extent to which Fannie Mae and Freddie Mac's investments in nonmortgage assets—such as long-term corporate bonds—serve their public missions. As I described earlier, HUD has not acted on its general regulatory authority to review the appropriateness of the GSEs' nonmortgage investments as it committed to do in response to a 1998 GAO report. Given that HUD has not acted in this area for the past 6 years, we again recommend that Congress legislate nonmortgage investment criteria for HUD or any new GSE regulator that may be established through legislation.

- There is virtually no information available as to whether Farmer Mac's activities have benefited agricultural real estate markets. For example, the depth and liquidity of the demand for AMBS in the current market is unknown.

Without quantifiable measures and reliable data, Congress and the public cannot judge the effectiveness of the GSEs in meeting their missions or whether the benefits provided by the GSEs' various activities are in the public interest and outweigh their financial risks. To improve the quality of information about the GSEs' activities, I believe that the GSEs, the new housing GSE regulator, and FCA—the regulator of Farmer Mac and FCS—should research the areas that we have identified as well as others and periodically report their findings to the public.

Mr. Chairman, this concludes my statement. In summary, I believe that the following steps can be taken to strengthen GSE governance and oversight:

- Fannie Mae and Freddie Mac should ensure that their executives report to independent boards; FHLBank directors should be chosen through transparent and inclusive processes; and GSE compensation packages should include short and long-term performance measures;

- Congress should create a single housing GSE regulator that is governed by a board or a hybrid board and director and has adequate authorities to fulfill its safety and soundness and mission compliance oversight responsibilities; and

- Congress should provide clearer direction to the GSEs in fulfilling their missions—such as in the case of the GSEs' nonmortgage investments—and the GSEs, the new GSE regulator, and FCA should research certain

aspects of the GSEs' financial activities and periodically report to the public as to how these activities are consistent with mission requirements.

I would now be happy to respond to any questions that you or other members of the Committee may have.

## Staff Contacts and Acknowledgements

For further information regarding this testimony, please contact Thomas J. McCool at (202) 512-8678 or William B. Shear at (202) 512-4325. Individuals making contributions to this testimony include Diane Brooks, M'Baye Diagne, Rachel DeMarcus, Andrew Pauline, Wesley M. Phillips, Mitchell Rachlis, and Karen Tremba.

# GAO Government-Sponsored Enterprise Related Reports

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