

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is centered within the hourglass.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RL32815>

February 2, 2009

Congressional Research Service

Report RL32815

Federal Home Loan Bank System: Policy Issues

Edward Vincent Murphy, Government and Finance Division

November 8, 2007

Abstract. Congressional discussions surrounding Fannie Mae and Freddie Mac and their regulators now include the Banks and could fold their overseer into a new single regulator for all three GSEs. This report gives a short history and basic description of the Federal Home Loan Bank System, its responsibilities, and its ties to the government. It also discusses issues affecting the Banks and highlights the differences between the FHLB System and the other two housing-related GSEs.

WikiLeaks



Federal Home Loan Bank System: Policy Issues

Edward Vincent Murphy
Analyst in Financial Economics

November 8, 2007

<http://wikileaks.org/wiki/CRS-RL32815>

Congressional Research Service

7-5700

www.crs.gov

RL32815

Summary

The Federal Home Loan Bank (FHLB) System comprises 12 regional banks (the Banks) that form a collective government-sponsored enterprise (GSE). As a GSE, the Banks have special ties to the federal government that accord them “agency” status and lead investors in capital markets to infer that the government would step in to make good any failure in the debt of the Banks.

Originally begun in 1932 as lenders to the savings and loan associations that were the primary lenders for home mortgages, the Banks have undergone several changes since the savings and loan crisis of the 1980s. Membership in the Banks has changed, today encompassing more commercial banks than savings associations and including credit unions, insurance companies, and some associated housing providers. Purposes of lending—while still primarily housing-related—now include agricultural and small business lending. The changes have also resulted in special mission set-asides for low- and moderate-income housing and special programs for community development. The five-member Federal Housing Finance Board (FHFB) regulates the System.

Some advocate combining the FHFB with the Office of Federal Housing Enterprise Oversight (OFHEO), which is the current regulator of Fannie Mae and Freddie Mac, the other two housing-related GSEs. Differences between FHFB and OFHEO, including capital and ownership standards, requirements for the housing mission, and regulatory powers, complicate regulatory consolidation. In the 110th Congress, two major bills would merge regulation for the housing-related GSEs. Both S. 1100 and H.R. 1427 would combine regulation of the three housing GSEs under a single regulator who would have powers and independence similar to those of the FHFB. H.R. 1427 passed the House on May 22, 2007. S. 1100 was referred to the Senate Committee on Banking, Housing, and Urban Affairs on April 12, 2007. The measures have several important differences. (See CRS Report RL33940, *Reforming the Regulation of Government-Sponsored Enterprises in the 110th Congress*, by Mark Jickling, Edward V. Murphy, and N. Eric Weiss for additional information.)

The slowdown in housing markets and rise in foreclosures have led to concerns about the health of the FHLBs. Some large non-member lenders have affiliates that are members of a regional FHLB. These affiliates could draw on FHLB resources to move some troubled loans onto System balance sheets. This is a concern because some believe that the government would not let the FHLB System fail, and that such affiliate actions could raise the potential risk and cost to taxpayers.

Possible mergers of FHLBs is another issue. FHLB Dallas has been in negotiations to merge with FHLB Chicago, in part because of the financial difficulties of FHLB Chicago. The potential merger would be the first of its kind and raises several oversight issues, including FHFB approval powers and System organization. This report will be updated as events warrant.

Contents

Introduction	1
Federal Home Loan Banks and System.....	1
Origins and Development	1
Organization.....	2
Membership.....	3
Financing.....	3
Government-Sponsored Enterprise Privileges	4
Mission.....	5
Federal Housing Finance Board.....	5
Issues Facing the Bank System	6
Legislative Issues	8

Tables

Table 1. Basic Differences Between the Housing GSEs Today.....	9
Table 2. Summary and Comparison of Regulatory Authorities of Banking Regulatory Agencies, Office of Federal Housing Enterprise Oversight, and Federal Housing Finance Board	10

Contacts

Author Contact Information	11
Acknowledgments	11

Introduction

The 12 banks (the Banks) that make up the Federal Home Loan Bank (FHLB) System constitute one collective government-sponsored enterprise (GSE). Originally chartered by Congress to provide liquidity to the nation's predominant lenders for home mortgage loans—savings and loan associations and savings banks—the Banks have undergone a series of changes over the years as the nation's financial institutions have changed. Still a lender to lenders primarily for housing, the Banks can now lend for many other purposes as well, and have special responsibilities for low- and moderate-income housing, for debts incurred by the federal government in handling deposit insurance crises of the 1980s, and for some community development projects. The system as a whole has also grown to become essentially the same size as the other two housing-related GSEs, Fannie Mae and Freddie Mac.

Congressional discussions surrounding Fannie Mae and Freddie Mac and their regulators now include the Banks and could fold their overseer into a new single regulator for all three GSEs. This report gives a short history and basic description of the Federal Home Loan Bank System, its responsibilities, and its ties to the government. It also discusses issues affecting the Banks and highlights the differences between the FHLB System and the other two housing-related GSEs.

Federal Home Loan Banks and System

Origins and Development

The Federal Home Loan Bank System (The System), created in 1932 by the Federal Home Loan Bank Act,¹ was patterned on the Federal Reserve System. It comprised 12 regional, member-owned and federally chartered Banks, each with its own individual board of directors. The System was headed and overseen by the Federal Home Loan Bank Board (FHLBB), whose three members were presidential appointees.

The purpose of the Banks was to provide liquidity for the main mortgage lenders of the time, the savings and loan associations. Home mortgage lending was often hampered—never more so than in the 1930s—because savings associations lacked consistent access to capital markets to replace deposits whenever large numbers of depositors withdrew their money, as would happen during periods of high unemployment. The Banks corrected this by making loans (“advances”) to the federally chartered savings associations which banking law required to be members of the Banks. The Banks secured the advances by placing liens on home mortgages held by the lenders, assuring the funds were used for housing finance.

The regional Banks also provided regulatory oversight for their thrift members under the guidance of the FHLBB. The Banking Act of 1935² added deposit insurance³ for the thrifts to the FHLBB to bolster confidence in housing finance. The System remained largely unchanged during the next three decades—the “golden years” of the savings and loan industry—until the

¹ 47 Stat. 128.

² 49 Stat. 684.

³ The Federal Savings and Loan Insurance Corporation (FSLIC).

Emergency Home Finance Act of 1970⁴ added the Federal Home Loan Mortgage Corporation (Freddie Mac), as a wholly owned subsidiary of the Banks, to create and maintain a secondary market for system members' conventional mortgages.⁵

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)⁶ made major changes to the System in response to severe failures in the savings and loan industry. It replaced the old FHLBB, viewed as a defective, self-dealing regulatory structure dominated by the institutions it regulated, with today's Federal Housing Finance Board (FHFB). The FHFB maintained supervision of the 12 Banks, but had neither regulatory nor deposit insurance functions over the remaining savings associations, which Congress delegated to a new Office of Thrift Supervision and the Federal Deposit Insurance Corporation, respectively. In addition, FIRREA removed Freddie Mac from the Bank System and reconstituted it as a publicly owned stock corporation, a twin to Fannie Mae. The act also opened membership in the Banks to all depository institutions, so long as they engaged in significant mortgage lending,⁷ and set up two requirements for the System: a set-aside of at least 10% of each Bank's net earnings for low- and moderate-income housing programs, and repayment of part of the debt incurred in paying off insured depositors for the savings and loans that failed (REFCORP debt, please see the Appendix).

The Federal Home Loan Bank System Modernization Act of 1999, Title VI of the Gramm-Leach-Bliley Act,⁸ subsequently broadened membership qualifications in the Banks by dropping minimum mortgage asset requirements, and making membership voluntary for all members, including federally chartered savings associations (who were the originally mandated members of the System). The law also required new, permanent capital standards for the Banks, and expanded the mission by allowing the Banks to make advances secured by assets other than housing loans—mainly agricultural and small business loans. It also altered and simplified the required obligation of the System's contribution to the old REFCORP debt, raising the likelihood that payments would be completed sufficient to “defease” the debt ahead of schedule.

Organization

Twelve regional Banks most directly carry out the System's operations. They are Atlanta, Boston, Chicago, Cincinnati, Dallas, Des Moines, Indianapolis, New York, Pittsburgh, San Francisco (the largest), Seattle, and Topeka. In addition, a jointly owned Office of Finance facilitates the Banks' borrowing.

Each Bank has its own board of directors, varying in size from 14 to 19 persons.⁹ For each of the 12 Banks, the FHFB appoints six of the directors, known as public interest directors, and

⁴ P.L. 91-351, 84 Stat. 450.

⁵ Fannie Mae was restricted to government-backed mortgages until that time, and had a long history of working mainly with mortgage bankers rather than the thrifts. In 1970, the newly partitioned and now publicly (shareholder) held Fannie Mae also received authority to deal in conventional mortgages, but the culture remained one attuned to mortgage bankers for several more years.

⁶ P.L. 101-73, 103 Stat. 183.

⁷ Joining institutions were to hold at least 10% of their assets as mortgages.

⁸ P.L. 106-102, 113 Stat 1450.

⁹ Banks covering five or more states may have the larger boards, in which cases, the FHFB may appoint up to nine public interest directors. 12 U.S.C. §1427.

supervises the election of the remaining eight by the members. At least two of each Bank's appointed directors must be representatives of organizations representing consumer or community interests. The FHFBS designates the chair and vice-chair of each Bank's board of directors and the geographic area of elective directorships in each district. The FHFBS approves the compensation of Bank presidents and directors.

Membership

System membership is limited to regulated depositories, insurance companies engaged in housing finance, and certain governmental housing finance bodies. Each member must own capital stock in its district Bank. Each Bank is thus privately owned with its own board of directors, management, and employees. Membership is voluntary. Members receive dividends on their shares of capital stock from the earnings of their respective Bank. A member must join the Bank district that serves the state in which the institution's home office or principal place of business is found. Commercial banks dominate System membership, and account for the largest share of borrowing. As of June 30, 2007, System membership totaled 8,119 institutions, with 5,861 commercial banks, 1,217 thrifts, 896 credit unions, and 145 insurance companies.

Financing

The Banks' permanent capital is non-public stock, which members must purchase upon joining a Bank and which they cannot cash in without a period of notice and certain determinations by the affected Bank. Banks largely fund their activity through System "consolidated obligations" (publicly traded bonds), which are the joint and several liabilities of all the Banks and are issued through the Office of Finance. Consolidated obligations are neither obligations of, nor guaranteed by, the United States. As with other GSEs, however, financial markets infer that the federal government would back these obligations if necessary to prevent default, an inference widely referred to as an "implied guarantee."

The Banks fund their day-to-day operations through earnings on their investments. The Banks also fund the regulatory operations of the FHFBS, which collects assessments from the earnings of the Banks. On-budget but self-supporting, the FHFBS is not subject to the congressional appropriations process.

System assets were \$1,037 billion as of June 30, 2007,¹⁰ of which \$640 billion comprised advances to members. (About 70% of members use advances.) The FHLBs held \$94 billion of mortgages in portfolio. Liabilities totaled \$992 billion. Capital totaled \$41 billion. System capital is about 4% of assets, relatively close to the regulatory minimum, yet perhaps half the level required for commercial banking companies. Much of the debt is short-term, which requires that each year the total rollover of debt be several times system assets. System obligations carry a triple-A/GSE credit rating, thus making the very low GSE costs of borrowing available to borrowing member-owners. (Individual Banks may have lower credit ratings, however.)

The System's primary activity is extending secured loans (advances) to member institutions. Whole first mortgage loans and mortgage-backed securities generally collateralize advances,

¹⁰ The Federal Housing Finance Board, *Federal Home Loan Bank Quarterly Combined Financial Report for the Period Ending June 30, 2007*.

although other assets also qualify. Under the 1999 Modernization Act, community financial institutions may receive advances supporting their loans to small businesses, small farms, and small agribusinesses.

Government-Sponsored Enterprise Privileges

As with all GSEs, Congress has given the System a series of special privileges and exemptions to help them in addressing their mission. These include

- a \$4 billion line of credit with the U.S. Treasury (for the System as a whole);¹¹
- eligibility of debt for Federal Reserve open market purchases, unlimited investment by commercial banks and thrifts,¹² and collateralizing public deposits;¹³
- priority on collateral claims on member institutions, over any and all other creditors (the “super lien”);¹⁴
- the use of Federal Reserve Banks as fiscal agents;¹⁵
- exemption of earnings from federal, state, and local income tax;¹⁶
- exemption of interest paid to investors from state income tax;¹⁷ and
- status of debt issues as government securities for purposes of the securities laws.¹⁸

The overall effect of these links to the federal government is that investors in System debt issuances might assume the federal government ultimately will treat the Banks as agencies, and, consequently, might not require as high a return as they would on debt of a comparable private-sector company. The Banks do borrow money at rates near to those of comparable-maturity Treasury issues. Although Bank debt does not carry the full-faith-and-credit backing of the federal government, investors generally believe that the federal government, which chartered them for their public policy mission, would not allow any Bank or its obligations to fail. The U.S. government came to the assistance of two major GSEs, Fannie Mae and the Farm Credit Banks/System, when their obligations threatened to default in the 1980s, suggesting that similar remediation might also occur for the FHLB System.¹⁹

¹¹ 12 USC §1431.

¹² 12 USC §24 for banks, §1464 for thrifts, §1767 for credit unions.

¹³ 12 USC §1434.

¹⁴ 12 USC §1430.

¹⁵ 12 USC §1435.

¹⁶ 12 USC §1433.

¹⁷ 12 USC §1433.

¹⁸ 15 USC §77c.

¹⁹ U.S., Government Accountability Office, *Federal Home Loan Bank System, An Overview of Changes and Current Issues Affecting the System*, GAO-05-489T (Washington: April 13, 2005), p.8.

Mission

The Banks have three missions. For purposes of meeting those missions, each Bank develops its own strategies. The first mission is to provide liquidity to members. They do this with advances, including member-callable and convertible advances, letters of credit, and acquisition of member assets (mortgages and mortgage-backed securities). Under the FHFB general management policy, each Bank is limited to holding mortgage-backed securities of no more than 300% of capital, except for those certificates acquired under the Shared Funding Program, an arrangement of the mortgage partnership funding program of the Chicago Bank and the system's principal acquired member asset program. Under this small program, a member of a Bank may sell eligible mortgage loans anywhere in the System to an institution that is a member of the Chicago Bank. The latter member then sells the loans to a trust that issues structured securities to the member for the loans, with Chicago acquiring the senior securities. Sales of all the securities are limited to Banks or members within the System, a restriction that limits direct competition with Fannie Mae or Freddie Mac.

The second mission is for housing and community investment. Under the affordable housing program (AHP), each Bank must give away 10% of net income through its members for low- and moderate-income housing.²⁰ Under the community investment program (CIP), the Banks lend to members at cost to finance loans for moderate-income households, and for commercial and economic development in low-and moderate-income neighborhoods.

The third (temporary) mission is to repay debts incurred for the deposit insurance losses due to failures of savings and loan associations in the 1980s and their cleanup in the 1990s. Each Bank must pay 20% of net earnings (after AHP payments) to help repay interest on bonds issued by REFCORP. Payments will continue until REFCORP pays the debt (April 15, 2030) or until sufficient funds have accumulated to assure its payment. At the most recent reporting, the debt set-aside is sufficient to last through January 2020.²¹

Federal Housing Finance Board

The regulator of the Banks is the Federal Housing Finance Board (FHFB), an independent regulatory agency in the executive branch. It is associated with, but not controlled by, HUD. The Board has five members. The President appoints four with the advice and consent of the Senate for seven-year terms. Not more than three members may be of the same political party. One represents consumer or community financial interests. One is designated as chairperson. The Secretary of HUD is the remaining director. The FHFB is on-budget but self-supporting through assessments on the Banks. Its operations are not subject to the congressional appropriations process. The Board's statutory authority is the Federal Home Loan Bank Act, as amended by FIRREA.

The Board has broad statutory powers over the Banks. It uses these powers to ensure the safety and soundness of the Banks and to see that they carry out their public purpose of providing home

²⁰ The Banks donate much of the money in grants to provide equity for low-income projects. The Banks often post reports on their AHP activities on their websites, all of which can be reached through <http://www.fhfb.gov>.

²¹ Another System financing corporation, known as FICO, is a vestige of an earlier deposit insurance refunding. The FHFB supervises FICO, which receives most of its funding from the deposit insurance funds of the FDIC. Congress has scheduled the FICO debt to be extinguished in 2014 through early 2016.

finance. These powers enable the Finance Board to take preventive action to protect individual Banks, which are jointly and severally liable for the System's consolidated obligations. Individual Banks may carry out their mission activities subject only to the approval of the Finance Board.

The FHLB Act requires the Banks to be examined annually. The statute gives the Board authority to suspend or remove officers and directors for cause. It can also issue supervisory letters, supervisory and capital directives, and can restrict dividends. The Board claims implicit authority to issue temporary and permanent cease and desist orders. This claim was bolstered on October 10, 2007, when FHLB Chicago entered into a consent degree with the FHFB in response to a cease and desist order related to FHLB Chicago's risk-management policies.

The 1992 Federal Housing Enterprises Financial Safety and Soundness Act emphasized that the FHFB's main concern shall be financial soundness,²² and its oversight in that area has been increasingly strong under varying leadership. The Board has the power to approve new and existing activities. It also approves the Banks' debt offerings. It can limit indirectly other activities through approval of the individual Bank budgets.

The Board has broad powers to liquidate and reorganize individual Banks, within a statutory framework that mandates that there be at least eight, but not more than 12, Banks. The Board may liquidate or reorganize a Bank whenever it finds such action will aid the efficient and economical accomplishment of the Bank Act.²³ For any liquidation or reorganization, another Bank may, with the approval of the Finance Board, acquire assets of any such liquidated or reorganized Bank and assume part or all of the liabilities. These supervisory powers for System organization may be tested by a proposed merger between FHLB Chicago and FHLB Dallas.

Issues Facing the Bank System

Some Bank assets, such as derivatives and manufactured housing loans, have resulted in losses, in the same manner (if not scale) as Fannie Mae and Freddie Mac. The Banks have, in some cases, had to restate earnings, cut dividends, alter their capital structures, and change managements as a result. Most problems have related to accounting for derivatives generally used to hedge against interest rate movements that could erode the value of Bank holdings of mortgages or liens on member mortgage portfolios and have had little cumulative effect.

The restatements had delayed some of the Banks' registrations with the Securities and Exchange Commission (SEC). In 2004, the FHFB required all the Banks to register at least one class of equity (member stock) with the SEC, thus giving up their charter exemptions from registration. As of April 11, 2007, each FHLB had submitted its Form 10-K with the SEC on time. Current combined financial reports for the FHLB system are now made available on the FHFB website.

Because of their cooperative and collective structure, SEC registration looks somewhat different from that of publicly held companies, but triggers the same disclosures as to the risks and financial details of the Banks. Now that the Banks have registered under the voluntary procedures, they are not permitted to de-register, and must file all appropriate disclosures and

²² P.L. 102-550, 106 Stat. 3941.

²³ No Bank has ever been liquidated. Such actions have occurred within the other cooperative and collective GSE, the Farm Credit System.

reports required by the SEC. They are also subject to fines and penalties for inaccurate or incomplete reporting under the securities laws, including the Sarbanes-Oxley Act.

Two other issues discussed among policy analysts concern risks attendant to joint and several liability, and the super lien. The former ensures that the Banks will come to each other's aid, should that be necessary, before the federal government would have to step in to take whatever actions it might deem necessary to prevent systemic losses to the banking or housing finance systems. Joint and several liability is a large part of why the Banks are usually considered a single, collective GSE rather than a collection of separate companies. It also, however, creates some "moral hazard" in that any one Bank may be encouraged to take risks that might have to be paid for in part by other Banks—even though other Banks may be unaware of any irregularity.

The super lien allows the Banks to step into a failed member institution and claim assets to make itself whole before any other creditor, including the FDIC. The Banks have not historically had to specify assets used as collateral until after a failure, leading to the opportunity to "cherry pick" the best assets remaining in a failed member institution and raising the costs to the FDIC of resolving a failed bank or thrift.

A continuing issue affecting all GSEs concerns the possibilities of systemic risk that arise from the circumstance of having all Bank debt treated by the financial markets as if it were federal agency debt. Because depository institutions, for which the federal government has clear safety responsibility, can hold agency debt without regard to limits on loans to a single lender, the possibility exists that a failure of the Banks could trigger failures of commercial banks, savings associations, and credit unions that were overexposed to System debt.²⁴ Such failures could in turn adversely affect the FDIC and even the federal budget, and could have wide repercussions throughout the financial system.

On December 22, 2006, the FHFB adopted a new rule to limit the finances of Federal Home Loan Banks.²⁵ The rule limits the excess stock of member banks to 1% of the bank's assets. The limit on excess stock, also known as voluntary stock, is meant to ensure that the banks remain appropriately capitalized, retain access to capital markets, and preserve safety and soundness. Because member banks have historically redeemed excess stock on presentation, the stock has some of the same characteristics of issuing new debt and raises some of the same issues of the government's implied guarantee and the possibility of systemic risk.

For the Banks, while their reach is not as great as Fannie Mae or Freddie Mac, the implied guarantee presents the same problems as for the other GSEs. Because of the market perception that GSEs are too important for the government to allow any of them to fail, the GSEs have an incentive to take on greater risks, or to expand into areas that allow them to grow their businesses at the expense of companies not so favored. This not only creates problems of competitiveness, but it also creates a macroeconomic problem of over-allocation of capital market credit into housing markets. The allocation, intended for housing, is problematic in that it is an indirect way to provide shelter. Not only can part of the implied subsidy be retained by the GSEs, what they pass through can be wasted in the sense that lower prices for mortgages may be lost in higher

²⁴ This concern also affects issuances of Fannie Mae and Freddie Mac. OFHEO determined in 2003, for example, that about 2,000 commercial banks held Fannie Mae debt equal to a little over half their capital, and about 1,000 banks had a similar amount of capital "impaired" by Freddie Mac debt issuances.

²⁵ See FR vol. 71, No. 249 Dec 28, 2006, pp. 78046-78051.

prices for housing.²⁶ Without very strong authorities, it can be difficult for regulators to control the activities of the GSEs; as they grow in size and scope, so does the potential systemic threat to financial markets.

The slowdown in the housing market could negatively affect the FHLBs. In addition to any delinquent loans that may be in the FHLB System, a general decline in house prices would reduce the value of the collateral that backs the banks making up the system. Declining collateral value hurts bank balance sheets even while the loans perform. Estimating the likely effect on the FHLB System is difficult because there has not been a national decline in house prices since the System was created, although regional house prices have declined.

Refinancing represents another channel through which troubles in mortgage markets could affect the FHLBs. Large lenders with affiliates that are members of a regional FHLB could use the System to access liquidity to refinance troubled loans. For example, the cost of borrowing funds to finance mortgage-backed securities increased in August 2007. Mortgage lending generally decreased as expected; however, the volume of FHLB advances to its members increased. It is possible that these advances are being used to refinance troubled borrowers out of resetting loans and into the FHLB System. On the one hand, refinances could help hold down foreclosure rates. On the other hand, refinances could move loans likely to default from private investors to the FHLB System, which some believe has an implicit government guarantee.

Legislative Issues

The major issue before Congress concerning the FHLB System is GSE regulatory reform. The proposed replacement of the current System regulator accompanies a basic move to restructure and strengthen regulation of Fannie Mae and Freddie Mac. Both H.R. 1427 and S. 1100 would fold the FHFBS and the Office of Federal Housing Enterprise Oversight (OFHEO)—the current regulator of Fannie Mae and Freddie Mac—into a single overseer for all three housing-related GSEs.

The Federal Housing Finance Reform Act of 2007, H.R. 1427, sponsored by Representative Frank and others, passed the House on May 22, 2007, by 313-104. The bill would fold the FHFBS and OFHEO into a single regulator for all three housing-related GSEs, to be known as the Federal Housing Finance Agency.

In the Senate, the Federal Housing Enterprise Regulatory Act of 2007, S. 1100, sponsored by Senator Hagel and others, also sets up a new single regulator. S. 1100 was referred to the Senate Banking Committee on April 12, 2007, but no further action has been taken as of the date of this writing.²⁷

The major reason behind such legislation is the widely understood weakness in the powers and authorities granted to OFHEO by Congress. Legislation would grant greater power and independence to the new regulator than to OFHEO, while nearly matching the authority and independence of the current FHFBS Board. Unlike the current FHFBS Board, however, the new regulator

²⁶ Congressional Budget Office, *Federal Subsidies and the Housing GSEs*, May 2001.

²⁷ See CRS Report RL33940, *Reforming the Regulation of Government-Sponsored Enterprises in the 110th Congress*, by Mark Jickling, Edward V. Murphy, and N. Eric Weiss for legislative comparisons.

would be a single agency director. **Table 1** summarizes the differences, as they relate to combined supervision, between the GSEs (as they are currently regulated).

Table 1. Basic Differences Between the Housing GSEs Today

	Federal Home Loan Bank System	Fannie Mae and Freddie Mac
Treasury Backing	The Banks have a line of credit with the Treasury Department of \$4 billion.	Fannie and Freddie have Treasury lines of credit of \$2.25 billion each.
Regulation: Safety and Soundness	FHFB can take actions based on any unsafe or unsound practice or violation of any agreement; includes power to place a Bank in receivership within limits that call for 8 to 12 Banks and to remove or suspend any employee of a Bank, for cause.	OFHEO enforcement actions are defined entirely in terms of impact on capital; it can place a GSE in conservatorship, but not receivership.
Regulation: Mission	FHFB oversees mission and has new product and activity approval with consideration of both housing and general financial markets.	HUD sets mission goals in light of conditions in the housing finance market.
SEC Registration	FHLBs registered with SEC (in 2005-6).	Voluntary—Fannie Mae since 2003 and Freddie Mac in 2005).
Taxation	Banks pay no income taxes, but do pay 20% of net income each year until the REFCORP debt is retired. Bank member-owners also pay full corporate taxes on all dividends received.	Fannie Mae and Freddie Mac pay federal (but not state) income taxes. Corporate shareholders receive the benefit of the dividends received deduction (85% of dividends may be excluded) when paying income taxes.
Structure	The Banks are a collective, cooperative GSE, with joint and several liability for each other. They are mutually held by their member-owners.	Fannie Mae and Freddie Mac are unitary GSEs that are publicly-held stock corporations traded on the New York Stock Exchange.
Profitability (Compared to Other Large Institutions)	Low	High
Capital	Capital-to-asset ratios must not fall below 5%. New Class B stock (which may not be redeemed except with five years notice, and may not be redeemed if it would harm the capital of a Bank) may count 1.5 times any class A (6-month) stock in determining this ratio, but the minimum capital standard is 4% including Class B weighting. Only two Banks use Class A stock.	Fannie Mae and Freddie Mac have minimum capital standards of 2.25% of portfolio assets and 0.45% of off-book guarantees. The parameters of their risk-based requirements are set in law. Fannie Mae's shortfall in capital has required it to sell preferred stock of \$5 billion.
Mission	Provide liquidity to their members so that they may better support housing finance (and some agricultural finance). The Banks act as bankers to bankers, using mortgages as collateral. The Banks can purchase or securitize loans with members but may only sell loans or securities from such activity within the System. Subject to conforming loan limit. The Banks have two specific mission set-asides: the affordable housing program and a community investment program. The Banks are required to give away not less than 10% of their net income	Provide liquidity to mortgage instruments in a secondary market. Fannie and Freddie buy and sell the products of mortgage lenders. Fannie Mae and Freddie Mac may purchase any qualifying loan from any originator and may hold or sell to any qualified entity. Subject to conforming loan limit. Fannie/Freddie have a mission set-aside for lower and moderate income housing. The affordable housing goals are set by

	Federal Home Loan Bank System	Fannie Mae and Freddie Mac
	for low and moderate income housing. CIP is an “at-cost” loan program: Banks lend to their members for approved projects at an interest rate equal to the cost of funds.	HUD and specify percentages of business that must be dedicated to set-aside business, perhaps accepting a lower return than from other business.
Securitization of Mortgages Into Capital Markets	No statutory authority to issue mortgage-backed securities to non-members.	Issue mortgage-backed securities in worldwide capital markets extensively. Also hold large amounts of securities and mortgages in portfolio.

Source: Congressional Research Service, The Library of Congress.

Some of the legislative discussion has also suggested that commercial bank-style regulatory controls and powers may be appropriate for a new GSE regulator. **Table 2** presents a comparison of the current authorities of bank regulators, OFHEO, and the FHFB over their regulated financial institutions. It summarizes the essential control mechanisms set forth in law, regulation, and practice to control risk, self-dealing, and certain other undesirable characteristics. Agency-to-agency variations exist, especially between OFHEO, the FHFB, and the banking regulators. The latter, however, strive for uniformity in their regulatory issuances, although they do not always achieve it and may apply “common” standards differently in examinations. Government-sponsored enterprises are “wholesale” nondepository institutions that are not supposed to make loans directly to the public. **Table 2** thus omits multiple banking regulations intended only for “retail” banking institutions.

Table 2. Summary and Comparison of Regulatory Authorities of Banking Regulatory Agencies, Office of Federal Housing Enterprise Oversight, and Federal Housing Finance Board

Control or Standards For:	Banking Agencies	OFHEO	FHFB
Activities			
Lines of Business (“Mission”)	Yes	No ^a	Yes
Dealings with Affiliates	Yes	No	No
Community Lending (low-cost housing, etc.)	Yes	No ^a	Yes
Assets and Capital			
Debt Security Holdings	Yes	Yes	Yes
Equity Security Holdings	Yes	Yes	Yes
Concentrations of Credit	Yes	Yes	Yes
Loans to One Borrower	Yes	No	No
Cash Reserves	Yes	No	No
Insider Loans	Yes	No	No
Loan to Value Ratios for Real Estate Loans	Yes	Yes	Yes
Appraisals for Real Estate Loans	Yes	No	No
Capital Standard: leverage ratios of stockholders' equity to total assets	Yes	No	Yes
Capital Standard: risk-based ratios, weighted for kinds of assets and capital	Yes	Yes	Yes

Control or Standards For:	Banking Agencies	OFHEO	FHFB
Capital Standards: Prompt Corrective Action to tighten controls over institutions as they become riskier	Yes	Yes	Yes
Ability to close severely capital-deficient institutions (receivership)	Yes	No (conservatorship)	Yes
Management and Ownership			
Operational and managerial standards generally	Yes	Yes (safety and soundness)	Yes (safety and soundness)
Compensation	Yes	Yes	Yes
Earnings	Yes	No	No
Ownership	Yes	No	Yes
Financial Statement Filing	Yes	Yes	Yes
SEC registration, Sarbanes-Oxley compliance, etc.	Yes	Yes "voluntarily"	Yes (in 2005-2006)

Source: Congressional Research Service, The Library of Congress. For details, please see 12 C.F.R. Chapters I (Office of the Comptroller of the Currency), II (Federal Reserve System), III (Federal Deposit Insurance Corporation), V (Office of Thrift Supervision), IX (Federal Housing Finance Board), and XVII (Office of Federal Housing Enterprise Oversight).

- a. The Department of Housing and Urban Development sets housing goals and determines propriety of new lines of business.

Author Contact Information

Edward Vincent Murphy
Analyst in Financial Economics
tmurphy@crs.loc.gov, 7-6201

Acknowledgments

The earlier work of William Jackson and Barbara Miles formed part of the basis for this report.