



The Daily Dish

A Shock to the GSE Reform World

DOUGLAS HOLTZ-EAKIN | JULY 18, 2018

Eakinomics: A Shock to the GSE Reform World

Eakinomics has weighed in on numerous occasions regarding the need for reform of Fannie Mae and Freddie Mac, the two housing government-sponsored enterprises (GSEs). The [housing market](#) is showing eerie signs of returning to pre-crisis conditions, Fannie Mae and Freddie Mac show signs of [drifting](#) away from their core mission, a [whole decade](#) has passed without Congress taking the lead on housing finance policy, and some have even argued that Fannie and Freddie should simply be [recapitalized and released](#) to re-assume their dangerous pre-crisis roles.

At the center of all of these debates is the Federal Housing Finance Administration (FHFA), the regulator of the GSEs and currently the least visible and most powerful housing policymaker. A thunderbolt struck the GSE reform debate yesterday when the Fifth Circuit Court found the FHFA to be [unconstitutionally structured](#). The key passage reads: “We hold that Congress insulated the FHFA to the point where the Executive Branch cannot control the FHFA or hold it accountable. We reach this conclusion after assessing the combined effect of the: (1) for-cause removal restriction; (2) single-Director leadership structure; (3) lack of a bipartisan leadership composition requirement; (4) funding stream outside the normal appropriations process; and (5) Federal Housing Finance Oversight Board’s purely advisory oversight role.”

The lawsuit was brought by aggrieved GSE investors who object to the fact that the GSEs must, each quarter, turn over their entire profits to the Treasury as part of the terms of their taxpayer support during the crisis. They had hoped to get access to those profits as dividends, but the court ruled against them: Because “the FHFA acted within its statutory authority by adopting the net worth sweep, we hold that the Shareholders’ APA claims are barred by § 4617(f). But we also find that the FHFA is unconstitutionally structured and violates the separation of powers.”

Now what?

Imagine for a second that this ruling is the end of the legal process (obviously not true). Congress would have to pass legislation to make the GSE’s regulator a constitutional entity. But that means that it would have to decide what (if anything) it wanted the GSEs to do. In short, congressional action to make the FHFA legal would jumpstart the process of legislative reform. At AAF’s recent [event](#) on the future of housing reform, there was little optimism that Congress and the administration would take up this challenge. The court may have left them no choice.