

Federal Housing Finance Agency
Office of Inspector General



**FHFA Must Resolve the
Conflicts in its Guidance for
Examinations of the Enterprises to
Meet its Commitment to
Develop and Maintain a
World Class Supervision Program**



OFFICE OF INSPECTOR GENERAL
Federal Housing Finance Agency

400 7th Street SW, Washington, DC 20219

September 1, 2021

TO: Paul J. Miller, Deputy Director, Division of Enterprise Regulation

FROM: Kyle D. Roberts, Deputy Inspector General for Evaluations /s/

SUBJECT: Management Advisory: FHFA Must Resolve the Conflicts in its Guidance for Examinations of the Enterprises to Meet its Commitment to Develop and Maintain a World Class Supervision Program

Summary

In prior reports, we found that FHFA’s guidance for examination of Fannie Mae and Freddie Mac (the Enterprises) was far more flexible and less prescriptive than the guidance of other federal financial regulators. As a result of that substantial flexibility, we reported that examiners in the Division of Enterprise Regulation (DER), the division responsible for supervision of the Enterprises, have significant discretion in conducting examinations, which has resulted in inconsistent examination practices.

In a 2019 evaluation, we found that FHFA had not finalized many of its supplemental examination modules for examinations of the Enterprises and that many of the supplemental modules remained in “field test” status for more than five years. DER reported that the supplemental modules were viewed largely as reference, and not examination, tools because they were too broad and were not useful for examining the Enterprises. DER advised that it was in the process of developing an Enterprise-specific examination manual, with the objective of providing more comprehensive and detailed work programs that would be used consistently year over year, strengthening DER’s capability to examine Enterprise risks consistently over time.

We recommended, and FHFA agreed, that FHFA: (1) establish and implement timelines and processes to ensure timely updates and revisions to DER’s examination manual and (2) establish and communicate clear expectations for use of revised and new examination modules by DER examiners. DER’s failure to implement this second recommendation is the basis for this management advisory.

According to DER, its February 2020 Operating Procedures Bulletin (OPB) on targeted examinations implemented our second recommendation. That OPB vested significant discretion in DER examiners to structure their examination procedures. Shortly thereafter, DER issued its Enterprise Examination Manual with far more prescriptive language in its Examination Work Programs than in the OPB. At that time, DER did not reconcile the OPB with its Work Programs. It subsequently replaced the February 2020 OPB with a revised OPB in December 2020. As we show in this management advisory, however, the December 2020 OPB fails to establish clearer expectations for examiners than the guidance in place at the time we made our recommendation. We also demonstrate that DER considers this OPB, which vests significant discretion in its examiners, to take precedence over the more directive guidance in the Enterprise Examination Work Programs in DER's Enterprise Examination Manual.

We appreciate that DER seeks to provide its examiners with flexibility to design examination procedures tailored to particular examination topics, scope, and objectives, but DER has not met its commitment to develop and implement guidance to achieve its goal of greater consistency in practices among its examination staff. While the December 2020 OPB does not align with the expectation articulated by DER leadership that examiners will follow examination procedures that reflect best practices, DER has no current plan to reconcile the December 2020 OPB with the more prescriptive language in the Enterprise Examination Work Programs. FHFA cannot expect to achieve its Strategic Goal of "world class" supervision of the Enterprises when it has not reconciled the December 2020 OPB with its Enterprise Examination Work Programs.

Because FHFA agreed with our recommendation to make clear its expectations for use of revised and new examination modules but DER has not adequately implemented that recommendation, we consider that recommendation closed as rejected and make two new recommendations here. In its written management response on August 6, 2021, FHFA requested time to review potential recommendations from an ongoing OIG audit before making a management decision to address our recommendations. FHFA stated that it would provide a management response to the OIG's recommendations within 120 days of issuance of this advisory.

Background

In prior reports, we found that FHFA's guidance for examination of the Enterprises was far more flexible and less prescriptive than the guidance of other federal financial regulators.¹ In a roll-up

¹ See OIG, [*Utility of FHFA's Semi-Annual Risk Assessments Would Be Enhanced Through Adoption of Clear Standards and Defined Measures of Risk Levels*](#) (EVL-2016-001, Jan. 4, 2016); [*FHFA's Supervisory Standards for Communication of Serious Deficiencies to Enterprise Boards and for Board Oversight of Management's Remediation Efforts are Inadequate*](#) (EVL-2016-005, Mar. 31, 2016); [*FHFA's Adoption of Clear Guidance on the Review of the Enterprises' Internal Audit Work When Assessing the Sufficiency of Remediation of Serious Deficiencies Would Assist FHFA Examiners*](#) (EVL-2018-003, Mar. 28, 2018); [*Five Years After Issuance, Many Examination Modules Remain in Field Test; FHFA Should Establish Timelines and Processes to Ensure Timely Revision of Examiner Guidance*](#) (EVL-2019-003, Sept. 10, 2019); and [*Despite FHFA's Recognition of Significant*](#)

report issued in March 2020, we summarized the findings of these prior reports up to that point in time and cautioned that FHFA’s examination guidance continued to be incomplete, unclear, and less rigorous than examination guidance adopted by other federal financial regulators.² We reported that, as a result of that substantial flexibility, DER examiners have significant discretion in conducting examinations, which we found resulted in inconsistent examination practices.³

FHFA Previously Agreed to Establish and Communicate Clear Expectations for Use of Examination Guidance by DER Examiners

FHFA has long expected its examiners to use its *Examination Manual*, issued in 2013, which sets forth policies and practices for examinations of its regulated entities. FHFA also developed additional examination guidance (known as supplemental examination modules) “to contribut[e] to a better documented, transparent, and more comprehensive examination program.” However, we found in a 2019 evaluation that FHFA had not finalized many of its supplemental

[Risks Associated with Fannie Mae’s and Freddie Mac’s High-Risk Models, its Examination of Those Models Over a Six Year Period Has Been Neither Rigorous nor Timely](#) (EVL-2020-001, Mar. 25, 2020).

² See OIG, [FHFA Faces a Formidable Challenge: Remediating the Chronic and Pervasive Deficiencies in its Supervision Program Prior to Ending the Conservatorships of Fannie Mae and Freddie Mac](#) (OIG-2020-002, Mar. 30, 2020). Subsequent to this report, FHFA issued its Strategic Plan in which it, among other things, established a strategic objective to “develop and maintain a world-class supervision program.” See FHFA, [Strategic Plan: Fiscal Years 2021-2024](#), at 6 (Oct. 27, 2020).

³ Where FHFA provided specific examination requirements, we found, in a number of reports, that DER examiners did not consistently follow the requirements. In a 2020 evaluation, we found that, notwithstanding FHFA’s adoption of a Risk Modeling examination module and work program and clear direction to follow them, DER did not require its examiners to use them. See OIG, [Despite FHFA’s Recognition of Significant Risks Associated with Fannie Mae’s and Freddie Mac’s High-Risk Models, its Examination of Those Models Over a Six Year Period Has Been Neither Rigorous nor Timely](#) (EVL-2020-001, Mar. 25, 2020). In a 2020 audit, we found that 40% of DER’s ongoing monitoring activities of Common Securitization Solutions failed to meet DER requirements, and DER failed to follow requirements for documenting risk-based reasons to change planned ongoing monitoring activities and obtaining written approval from the Deputy Director. See OIG, [FHFA Completed Most of its Planned Ongoing Monitoring Activities for Fannie Mae and CSS for 2019; However, FHFA Failed to Follow its Requirements When it Changed Examination Plans for Non-Risk-Based Reasons and Failed to Obtain Deputy Director Approval](#) (AUD-2020-011, Sept. 9, 2020).

See also OIG, [FHFA’s 2015 Report of Examination to Fannie Mae Failed to Follow FHFA’s Standards Because it Reported on an Incomplete Targeted Examination of the Enterprise’s New Representation and Warranty Framework](#) (AUD-2017-008, Sept. 22, 2017); [FHFA’s Targeted Examinations of Fannie Mae: Less than Half of the Targeted Examinations Planned for 2012 through 2015 Were Completed and No Examinations Planned for 2015 Were Completed Before the Report of Examination Issued](#), at 14 (AUD-2016-006, Sept. 30, 2016); [FHFA’s Targeted Examinations of Freddie Mac: Just Over Half of the Targeted Examinations Planned for 2012 through 2015 Were Completed](#), at 14 (AUD-2016-007, Sept. 30, 2016); [FHFA’s Examiners Did Not Meet Requirements and Guidance for Oversight of an Enterprise’s Remediation of Serious Deficiencies](#), at 16-17 (EVL-2016-004, Mar. 29, 2016); [FHFA’s Inconsistent Practices in Assessing Enterprise Remediation of Serious Deficiencies and Weaknesses in its Tracking Systems Limit the Effectiveness of FHFA’s Supervision of the Enterprises](#), at 21 (EVL-2016-007, July 14, 2016); and [Safe and Sound Operation of the Enterprises Cannot Be Assumed Because of Significant Shortcomings in FHFA’s Supervision Program for the Enterprises](#) (OIG-2017-003, Dec. 15, 2016).

examination modules and DER did not expect its examiners to follow examination modules when examining the Enterprises.⁴

In that evaluation, we reported that many of the supplemental modules remained in “field test” status for more than five years. DER officials advised us that the supplemental modules were viewed largely as reference tools by DER examiners, rather than examination tools, because they were too broad and were not useful for examining the Enterprises.

During that same evaluation, we reported that DER was developing an Enterprise-specific examination manual and was not finalizing the supplemental modules. The then-Deputy Director of DER informed us that the objective of DER’s new Enterprise Examination Manual was to provide more comprehensive and detailed work programs that would be used consistently year over year, strengthening DER’s capability to examine Enterprise risks consistently over time.⁵ We recommended, and FHFA agreed, that FHFA: (1) establish and implement timelines and processes to ensure timely updates and revisions to DER’s examination manual and (2) establish and communicate clear expectations for use of revised and new examination modules by DER examiners.

The second recommendation is the basis for this management advisory. The first recommendation was closed as implemented on March 18, 2021.

Effective February 2020, FHFA replaced the then-Deputy Director of DER with a new Deputy Director as part of an organizational “realignment.” Shortly thereafter, DER issued an OPB, *Targeted Examination Process and Documentation*, on February 24, 2020, which states that it “describes processes and documentation requirements for [DER’s] targeted examinations.” According to DER officials, this OPB was intended to provide guidance to DER examiners on conducting a targeted examination to foster greater consistency in the application of examination standards across the examination teams.

Notwithstanding those intentions of DER officials, the OPB’s actual language on the use of Work Programs falls far short of fostering greater consistency in the application of examination standards. The OPB continued to vest significant discretion in DER examiners:

[E]xaminers are expected *to consider* relevant procedures in Enterprise Examination Work Programs when developing the initial [Procedures Document]. (emphasis added)

⁴ See OIG, [Five Years After Issuance, Many Examination Modules Remain in Field Test; FHFA Should Establish Timelines and Processes to Ensure Timely Revision of Examiner Guidance](#) (EVL-2019-003, Sept. 10, 2019).

⁵ Our 2019 evaluation report focused on the examination modules, which at the time included the work programs. DER subsequently separated the work programs from the modules during development of its Enterprise Examination Manual.

Because this guidance does not require examiners to *follow* “relevant” procedures, but only to consider them, this OPB failed to meet the commitment made by FHFA in response to our 2019 recommendation.

DER replaced the February 24, 2020, OPB with a new OPB issued on December 31, 2020. DER replaced the language discussed above with equally vague and non-prescriptive guidance:

[R]elevant procedures in Enterprise Examination Work Programs should also be ***taken into consideration*** when developing the initial Procedures Document (PD). (emphasis added)

The December 2020 version of the OPB makes no meaningful change with respect to the operative language pertaining to examination procedures. Whereas the February 2020 version of the OPB specifically instructed *examiners* to consider relevant procedures in Work Programs, its December 2020 replacement dropped the reference to examiners but retained the substance of the instruction that relevant procedures be taken into consideration.

Shortly after the February 2020 OPB issued, DER’s Office of Risk and Policy (ORP) (the organizational unit responsible for updating and maintaining DER’s Work Programs) notified DER staff on March 31, 2020, that DER’s Enterprise Examination Manual, along with Work Programs, and job aids “are now available” for use in DER examination work. ORP further advised that both the Enterprise Examination Manual and Work Programs “generally supersede” FHFA’s 2013 Examination Manual.

DER’s Enterprise Examination Manual contains an overview and two categories of documents: Enterprise Examination Modules and Enterprise Examination Work Programs. The Modules contain an introduction/overview of the topics, background information, illustrative examination objectives, criteria, and a section covering FHFA’s supervisory expectations for risk management. The Work Programs set forth work steps and procedures that follow a three-step examination process – examination planning, examination procedures, and examination conclusions and findings.

The examination procedures section in each of the 24 Work Programs of the Enterprise Examination Manual contains more specific direction to examiners than either the February or December 2020 OPB. This section explains:

Procedures for each examination objective are designed to guide the examiner in analyzing the topic and support the examination conclusion and findings. Procedures include independent analysis of Enterprise information, document reviews, interviews of management, and testing. Examiners will generally not be expected to perform all of the procedures, but instead, are expected ***to identify and perform those procedures that are necessary to support conclusions and findings for the scope of the examination activity.*** (emphasis added)

Analysis

DER's OPB Does Not Meet FHFA's Commitment to Establish Clearer Expectations for Examiners

In 2019, we recommended, and FHFA agreed, that FHFA establish and communicate **clear expectations** for use of revised and new examination modules by DER examiners. According to FHFA, the February 2020 OPB implemented our recommendation. As discussed, this OPB did not require examiners to follow “relevant” procedures, but only to consider them, and fell short of our recommendation. We did not consider the OPB to implement our recommendation and kept the recommendation open.

Ten months later, FHFA replaced the February 2020 OPB with the December 2020 OPB. The December 2020 OPB retains examiners’ discretion in whether to select among the procedures in Work Programs when designing the scope of an examination. In our view, the OPB’s direction that relevant procedures “should also be taken into consideration,” without more, does not constitute “enhanced guidance” and does not clarify or instruct examiners on when they are expected to *follow* the procedures in the Enterprise Examination Work Programs.

Further, the December 2020 OPB does not reflect a material change in FHFA’s expectations for examiners’ use of the Work Programs or an enhancement to its prior guidance. In our view, the language is no more instructive nor clearer than the guidance in FHFA’s 2013 Examination Manual, which was in place at the time of our 2019 evaluation. According to the 2013 Examination Manual:

Procedures should generally comport with the worksteps and workprograms found in applicable FHFA examination modules and supplemental guidance. They should be completed to the degree necessary to determine whether the Enterprise’s management understands and adequately controls the levels and types of risks that are assumed.

The OPB’s guidance to merely take “into consideration” procedures contained in the Work Program is insufficient to foster greater consistency in the application of examination standards, due to the broad discretion afforded examiners to craft procedures.

The Associate Director for DER’s Office of Enterprise Supervision Oversight (OESO)⁶ asserted to us that the 2020 OPB and DER’s job aids were intended to provide clarity and structure by establishing a three-step examination process – examination planning, examination procedures, and examination conclusions and findings. Notably, each Enterprise Examination Work Program contains an “Examination Procedures” section that includes examination objectives and their associated procedures. While the OESO Associate Director asserted that examiners should use the Enterprise Work Programs as a starting point, if applicable, he acknowledged that the

⁶ OESO is responsible for developing DER’s operating procedures bulletins.

OPB vested examiners with greater discretion and flexibility than the Work Programs in developing examination procedures and did not require them to use the procedures set forth in the Work Programs. He commented further that “examination procedures” contained in certain Work Programs currently are framed more like examination objectives than actual procedures, and acknowledged that DER could achieve greater clarity by revising the procedures in those Work Programs.

ORP staff reported to us that ORP incorporated examination procedures from prior examinations, where those procedures existed, into Enterprise Work Programs. DER’s Senior Associate Director characterized that approach as “best practices.”⁷ This Senior Associate Director explained that, for those Work Programs containing “best practices” procedures, DER expected its examiners to follow those procedures.⁸ According to this official, examiners should start with the Work Program as a base and, if the examination procedures apply, follow those (or document their reason for not following them). He was unable to resolve the discrepancy between the current OPB, which only requires examiners to “consider” those procedures, not follow them, with his view that examiners should follow best practices procedures in the Work Program.

While DER’s New Examination Work Programs Are More Prescriptive than its December 2020 OPB, DER Officials Maintain That Examiners Should Follow That OPB

DER’s Enterprise Examination Work Programs, announced in March 2020, direct (with one exception) that examiners are “expected to consider relevant procedures in this work program *and follow them as appropriate* when planning and conducting supervisory activities of the Enterprises.”⁹ (emphasis added) This clear direction to follow relevant procedures, according to DER, “supports a consistent examination approach while allowing flexibility in designing examination objectives, scope, and procedures.”¹⁰ The Work Programs also state: “Examiners

⁷ DER’s Senior Associate Director and its Deputy Director are responsible for the supervision of the Enterprises to ensure their safe and sound operation. Authority to approve exceptions to OPB standards rests with the Senior Associate Director unless delegated to the examiners-in-charge.

⁸ The ORP Associate Director concurred with this view. According to this Associate Director, DER developed the examination procedures in some of the updated Work Programs from prior examination procedures, which he considers best practices within DER. To the extent best practices are available and applicable, DER examiners are expected to follow them.

⁹ The language in the Work Programs omits guidance to examiners on how to determine when it would be “appropriate” to follow the applicable procedures in the Work Programs.

¹⁰ One Work Program includes language mandating its use. The Overview of the March 2020 Earnings Work Program states that “examiners *must* use this work program when planning, conducting, and documenting safety and soundness examination...” (emphasis added) DER asserted that this language was a “mistake” and should be consistent with the language of the other Work Programs, which states “DER examiners are expected to consider relevant procedures in this work program...”

will generally not be expected to perform all of the procedures, but instead, are expected to identify and perform those procedures that are necessary to support conclusions and findings for the scope of the examination activity.”

That direction in the Work Programs to “identify and perform those procedures that are necessary to support conclusions and findings” conflicts with the December 2020 OPB instructing that examiners should take relevant procedures “into consideration.” Both the Associate Directors of OESO and ORP agreed that the language in the Work Programs is inconsistent with the OPB. Both underscored that examiners are expected to follow the OPB.

The ORP Associate Director stated that he preferred that examiners use the Work Programs to achieve consistency across DER, but he explained that requiring certain procedures in a Work Program would conflict with the OPB. While he recognized that the OPB could be revised to provide direct and clearer guidance, he asserted that such revisions would not likely occur until DER develops its “risk taxonomy,” which he described as all risk topics that DER could use to identify gaps in risks not addressed in the current Work Programs. DER has not set a specific timeframe for completion of its risk taxonomy.

We asked DER to explain, in writing, whether it expected its examiners to follow its Enterprise Examination Manual and use the procedures in a Work Program when those procedures align with the scope and objectives of a supervisory activity. In response, DER simply repeated the OPB language: “examiners are expected to consider relevant procedures in Enterprise Examination Work Programs when developing the initial PD.” This response aligns with the explanations provided by the Associate Directors of OESO and ORP.

In March and April 2020, DER conducted mandatory training on revisions to its targeted examination OPB. The training slides state that examination procedures “[s]hould be developed with consideration of relevant procedures in Enterprise Examination Work Programs” but provide no additional guidance on when examiners would be expected to follow any of the procedures in the Work Programs. In June 2020, the ORP Associate Director acknowledged that this training on the Enterprise Examination Manual was not sufficient and that DER’s Examiner Development Branch (EDB) planned to conduct more thorough training on the Work Programs within 12 months. The EDB Manager confirmed that EDB plans to conduct training on the Enterprise Examination Manual and advised us that the training materials are undergoing review within DER.

Findings

FHFA agreed with our recommendation to establish and communicate clear expectations for the use of revised and new examination guidance and committed to issue internal guidance that

The ORP Associate Director informed us that the language in this Work Program is inconsistent with the language in other Work Programs, in part, because different offices within DER were responsible for drafting them. However, as of June 2021, DER had not updated that language.

would communicate management’s expectations for use of the Enterprise Examination Manual in examinations. However, we found that DER’s December 2020 OPB fails to establish clearer expectations for examiners than the guidance in place at the time we made our recommendation and in the relevant guidance in the Enterprise Examination Work Programs. This OPB does not require examiners to *follow* “relevant” procedures in the Work Programs, but only to take them into consideration.

While the December 2020 OPB does not align with DER leadership’s expectation that examiners will follow examination procedures that constitute best practices, DER has no current plan to reconcile the December 2020 OPB with the more prescriptive language in the Enterprise Examination Work Programs.

Conclusion

Absent clearer guidance and expectations, there is no assurance that the long-standing inconsistent supervisory practices we have observed in DER will improve. Once again, DER adopted less prescriptive guidance for its examiners, which vests significant discretion in each examiner to develop his or her own procedures and ignore applicable ones, over clear guidance designed to produce consistent examinations across DER. While we appreciate that DER seeks to provide its examiners with flexibility to design examination procedures tailored to particular examination topics, scope, and objectives, DER has not developed guidance needed to achieve its goal of greater consistency in practices among its examination staff. FHFA cannot expect to achieve its Strategic Goal of “world class” supervision of the Enterprises when it has not reconciled its governing OPB with its Enterprise Examination Work Programs.

Because DER’s less prescriptive December 2020 OPB does not establish clear expectations for examiners, it does not meet the commitment FHFA made in response to our 2019 recommendation. We consider that recommendation closed as rejected and make two new recommendations to further DER’s goal of consistent practice among examiners.

Recommendations

We recommend that FHFA:

1. Revise the December 2020 Operating Procedures Bulletin to establish specific guidance with respect to the circumstances under which DER expects examiners to follow examination procedures in the Work Programs; and
2. Align the guidance in the governing Operating Procedures Bulletin with the guidance in the Work Programs in order to foster consistent examination practice.

FHFA Comments and OIG Response

On August 6, 2021, FHFA provided a written response to a draft of this management advisory. In its response, which is included in the Appendix to this advisory, FHFA requested time to

review potential recommendations from an ongoing OIG audit before making a management decision to address this report's two recommendations. FHFA stated that it would provide a management response to the OIG's recommendations within 120 days of issuance of this report.

Appendix: FHFA's Response to OIG's Advisory



Federal Housing Finance Agency

MEMORANDUM

TO: Kyle D. Roberts, Deputy Inspector General for Evaluations, Office of Inspector General

FROM: Paul J. Miller, Deputy Director, Division of Enterprise Regulation **Miller, Paul** Digitally signed by Miller, Paul
Date: 2021.08.06 12:05:17
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SUBJECT: Draft Management Advisory: *FHFA Must Resolve the Conflicts in Its Guidance for Examinations of the Enterprises to Keep Faith with Its Commitment to Develop and Maintain a World Class Supervision Program*

DATE: August 6, 2021

Thank you for the opportunity to review the Office of Inspector General's (OIG) draft report referenced above (Report). The OIG is currently conducting an audit of DER's use of the Enterprise Examination Manual Work Programs in conducting targeted examinations. Considering this, DER would like to review the potential recommendations from the current audit before making a management decision to address the Report's two recommendations. Accordingly, FHFA will provide a management response to the OIG's recommendations within 120 days of issuance of the Report.

If you have any questions related to our response, please do not hesitate to contact Eric Wilson.

cc: Scott Valentin
Eric Wilson
Edom Aweke
John Major