



BILLING CODE 8070-01-P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1253

RIN 2590-AA17

Prior Approval for Enterprise Products

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking: request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency) is seeking comment on a proposed rule to implement section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by section 1123 of the Housing and Economic Recovery Act of 2008. This proposed rule, if adopted, would replace a 2009 interim final rule that established a process for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) to obtain prior approval from the FHFA Director for a new product and provide prior notice to the Director of a new activity.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AA17, by any one of the following methods:

- *Agency website:* www.fhfa.gov/open-for-comment-or-input.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590-AA17.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA17, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW, Washington, DC 20219. Deliver the package at the Seventh Street, SW, entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA17, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Susan Cooper (202) 649-3121, susan.cooper@fhfa.gov, Office of Housing and Regulatory Policy; or Miriam Smolen (202) 230-2987, miriam.smolen@fhfa.gov, Office of General Counsel, Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20219. These are not toll-

free numbers. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments and Access

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, e-mail address, and telephone number, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

II. Background

A. Statutory Background

Through products offered to the marketplace and their activities in the housing finance system, Fannie Mae and Freddie Mac, together, own or guarantee nearly \$5.6¹ trillion of residential mortgages in the United States as of Q1 2020. Their products play a key role in housing finance and the U.S. economy. The Enterprises, while continuing to serve their public missions, are motivated to seek out new technological advances and pursue innovations, which can create new opportunities to provide the public, counterparties, and the market more access to and options for products. However, the Enterprises also take on risks, and create risks for themselves and the mortgage finance, financial system and the broader economy, through their activities and product offerings.

¹ See <https://fred.stlouisfed.org/release/tables?rid=52&eid=1192326>.

The parameters of certain new activities and products may also raise questions of how successfully such new activities and products achieve the Enterprises' public missions against the risks created through such actions.

Recognizing the significant effects that Enterprise products and activities have on the market and market participants, the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*) (the Safety and Soundness Act or Act) empowered the FHFA Director to review products prior to the products being offered to the market. Specifically, the Safety and Soundness Act requires “each [E]nterprise to obtain the approval of the Director for any product of the [E]nterprise before initially offering the product.” *See* section 1321(a) of the Safety and Soundness Act (12 U.S.C. 4541(a)).

The Safety and Soundness Act makes a distinction between an activity and a product, and provides for the Enterprise to submit information to FHFA so that the Director may make certain determinations related to that distinction. The Safety and Soundness Act uses the term “product” when discussing products which are new for an Enterprise, and the language “new and existing products or activities” when discussing products and activities both new and already in existence. For ease of understanding, the proposed rule and this supplementary information use the term “new product” and “new activity” consistently to describe a product and activity which either does not exist at all, or exists in a different form, at the time of the effective date of the proposed rule when it becomes final.

Before commencing a new activity that an Enterprise does not consider to be a product, the Safety and Soundness Act requires an Enterprise to provide “written notice”

to the Director for a determination of whether such an activity is a product subject to prior approval under section 1321. *See* section 1321(e)(2) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)). If the Director determines such a new activity to be a new product, the Enterprise shall “obtain the approval of the Director for any product of the [E]nterprise before initially offering the product.” *See* section 1321(a) of the Safety and Soundness Act (12 U.S.C. 4541(a)). In considering any request for approval of a new product, the Director shall make a determination whether the product is authorized pursuant to certain sections of the Enterprises’ authorizing statutes,² whether it is in the public interest, and whether it is consistent with the safety and soundness of the Enterprise or the mortgage finance system. *See* section 1321(b) of the Safety and Soundness Act (12 U.S.C. 4541(b)). As part of the process for the Director’s approval of a new product, the Safety and Soundness Act provides a timeline for receipt and review of public comment regarding the proposed product. *See* section 1321(c) of the Safety and Soundness Act (12 U.S.C. 4541(c)).

The Safety and Soundness Act excludes automated loan underwriting systems and mortgage terms and conditions, and certain upgrades and modifications to those activities, from the requirements of section 1321 of the Safety and Soundness Act (12 U.S.C. 4541). *See* section 1321(e) of the Safety and Soundness Act (12 U.S.C. 4541(e)). The Act also excludes “any other activity that is substantially similar” to the above activities, and to “activities that have been approved by the Director in accordance with

² Fannie Mae’s authorizing statute is the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*). Freddie Mac’s authorizing statute is the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

this section.” *Id.* The Director’s safety and soundness authority is not restricted by this provision of the Safety and Soundness Act, nor is his authority to determine that the Enterprise’s activities are consistent with its statutory mission. *See* section 1321(f) of the Safety and Soundness Act (12 U.S.C. 4541(f)).

B. *Interim Final Rule*

FHFA adopted an Interim Final Rule for Prior Approval for Enterprise Products (Interim Final Rule) which became effective on July 2, 2009, and remains in effect. Interim Final Rule, 12 CFR 1253.³ That rule established an interim approach to implementing the Act’s provisions pertaining to the process for the Enterprises to obtain prior approval from the FHFA Director for a new product and provide prior notice to the Director of a new activity. This proposed rule, if adopted as final, would replace the Interim Final Rule. However, until this proposed rule becomes final and effective, the Prior Approval for Enterprise Products regulation established under the Interim Final Rule shall remain in force and effect.

The Interim Final Rule provides the requirements for an Enterprise to gain prior approval for an Enterprise product. The Interim Final Rule also provides that an Enterprise must submit a Notice of New Activity regarding a new activity or new product, and the Rule included a Notice of New Activity form in an appendix. *See* Interim Final Rule, Appendix to 12 CFR part 1253. The form includes instructions on providing the required information, and additional instructions are also provided in the Appendix, including criteria for identifying a new activity and new product.

³ References to the Interim Final Rule, at 74 FR 31602 (July 2, 2009), will include the description “Interim Final Rule, 12 CFR part 1253 or 12 CFR and the corresponding section.” References to the proposed rule will refer to the section of the proposed rule in part 1253.

FHFA received a small number of comments on the Interim Final Rule, including from the Enterprises. While FHFA has reviewed those comments, the lengthy passage of time and the change in circumstance for the Enterprises from 2009, support providing those parties and other members of the public an opportunity to provide new comments on this proposed rule.

C. *Conservatorship*

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act to stabilize the Enterprises and to help assure performance of their public mission. In September 2019, the U.S. Treasury Department released its housing reform plan that recommended that FHFA begin the process to end each Enterprises' conservatorship in a manner consistent with the preconditions set forth in that plan.⁴ In October 2019, FHFA issued a new Strategic Plan and Scorecard for the Enterprises that stated that “[e]nding the conservatorships of Fannie Mae and Freddie Mac is a central and necessary element of this new roadmap.”

The Interim Final Rule has been in effect during the majority of the time of the conservatorships of the Enterprises. In light of FHFA's obligation to end the conservatorships, this proposed rule, if adopted as a final rule, would be in operation both during and after the Enterprises' transition from conservatorship. Therefore, FHFA believes it is important to propose the Prior Approval for Enterprise Products rule which will replace the Interim Final Rule to afford interested parties an opportunity to comment

⁴ Treasury, Housing Reform Plan at 26 (Sept. 2019), available at <https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf>.

on the scope of the proposed rule and the process for submission and FHFA review of a new activity and new product.

III. Discussion of Proposed Rule

A. Overview of the Proposed Rule

The proposed rule would provide the criteria for what is a new activity and a new product, and the process for that activity's review and approval by the Director.

Although the Act does not provide definitions for a product or an activity, or for how to identify what is "new," the proposed rule provides distinguishing characteristics in order to implement the statutory mandate for the Director to approve a new product prior to an Enterprise offering that product. The standard for approving a new product includes determinations that the product complies with the Enterprises' authorizing statutes, that it is in the public interest, and that it is consistent with the safety and soundness of the Enterprise or the mortgage finance system. *See* section 1321(b) of the Safety and Soundness Act (12 U.S.C. 4541(b)). Because of the lack of definitions, and the breadth of the considerations relevant to approval, FHFA concludes that the determination of whether a new activity is a new product in specific instances is committed to Agency discretion by law.

The Act has separate provisions for a request for prior approval of a new product and for a notice of a new activity that the Enterprise does not believe to be a new product. However, FHFA does not believe that it is practical to require an Enterprise to identify a new product in advance – as distinct from a new activity that is not a new product – for purposes of determining which type of submission to make to the Agency. For that reason, the proposed rule provides for a unified notice process which requires an

Enterprise to make a single form of submission – a Notice of New Activity. A single submission will also streamline the review conducted by FHFA.

Both the Act and the Interim Final Rule set the parameters of the activities that fall within the scope of the Act through a set of exclusions to the requirements of the Act. Not all new activities, even if “new” by virtue of date, are to be reviewed as a possible new product if they are excluded through either statutory, or additional regulatory, exclusions. Both the Interim Final Rule and proposed rule follow the Act’s framework, but also provide criteria for how to identify a new activity. The Interim Final Rule provided a form for the Notice of New Activity and instructions regarding the content for the form and to aid the Enterprise in identifying a new activity and new product. The proposed rule incorporates the Interim Final Rule’s substantive criteria for a new activity and new product into the regulation text in a reorganized and more streamlined format. In addition, in the proposed rule, FHFA seeks to streamline and simplify the content and submission of a Notice of New Activity by incorporating the required content into the regulation text rather than in a specific form as part of an appendix to the regulation.

In establishing the criteria by which to identify a new activity, the proposed rule would employ, as much as possible, objective characteristics that can be commonly understood. The proposed rule limits the use of terms such as “substantial,” “significant,” or “*de minimis*” because of the lack of a clear, common understanding of such subjective terms. Where those terms are used, additional guidance is provided in this supplementary information to align the meaning of the terms.

As provided in the Safety and Soundness Act, 12 U.S.C. 4541(f), the Director’s exercise of his or her authority under the regulations in this part in no way restricts the

Director’s safety and soundness authority over all new and existing products or activities of an Enterprise, or the Director’s authority to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an Enterprise.

B. *New Activity and New Product*

The proposed rule at § 1253.3 would describe the criteria for identifying a new activity and also describe the activities that are excluded from the requirements of the proposed rule.⁵ New activities meeting these criteria merit review by FHFA because they may implicate considerations of compliance with the Enterprises’ authorizing statutes, safety and soundness, and the public interest.

Section 1253.3(a)(1) of the proposed rule would provide a description of the nature of an “activity” to distinguish the universe of actions that are within the scope of the proposed rule from the total business operations of an Enterprise. An activity would be a business line, business practice, offering or service, including guarantee, financial instrument, consulting or marketing, that the Enterprise provides to the market either on a standalone basis or as part of a business line, business practice, offering, or service.

Section 1253.3(a)(2) of the proposed rule would provide the specific criteria that identify an activity as “new.” A threshold criterion for a new activity is timing – that an activity is not currently engaged by the Enterprise as of the effective date of this proposed

⁵ OFHEO capital regulation for the Enterprises, 12 CFR part 1750, Subpart B, App. A (Risk-based capital) provides for a definition for new activity, which applies to the relevant section of that appendix, and is not controlling for purposes of 12 CFR part 1253. In any event, 12 CFR part 1750 in its entirety is proposed to be removed as part of the proposed rule for Enterprise Regulatory Capital Framework, 12 CFR part 1240, at 85 FR 39274 (June 30, 2020).

rule when final, or is an enhancement, alteration, or modification to an existing activity that the Enterprise currently engages in as of the effective date of this proposed rule when final.

The proposed rule would set the trigger date for new activities to be the effective date of the final rule. This is different than the Interim Final Rule which used the trigger date of July 30, 2008. To the extent that the Enterprises have initiated new activities in the time period between July 30, 2008 and what will be the effective date of the final rule, the Interim Final rule has been in effect. Importantly also, during this time period, both Enterprises have, and continue to be, in conservatorship which provides special conservator review of Enterprise activities in addition to FHFA's standard supervisory and regulatory oversight. Given the passage of time and the evolution of the Enterprises' business activities since the date of the Interim Final Rule, FHFA determined that the appropriate trigger date for the proposed rule would be the effective date of a final rule so the proposed rule looks forward, rather than retroactively.

In addition to meeting the requirements of proposed § 1253.3(a)(1) and (2), a new activity must be an activity which is described by one or more of the criteria provided at proposed § 1253.3(a)(3). The first three of these criteria are that an activity: (1) Requires a new type of resource, a new type of data, a new policy or modification to an existing policy, a new process or infrastructure; (2) Expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise; or (3) Involves a new category of borrowers, investors, counterparties, or collateral.

These elements use objective criteria to distinguish a new activity from an ongoing activity and to identify common attributes that may appear in business activities

that are innovations or different from ongoing activity. For example, a new activity that uses a new type of data would include collecting a data item from an external party that had not been collected or used before by an Enterprise versus an activity that uses or collects the same type of data but uses it in a different format or captures an additional field for use in the same way. Similarly, an expansion of an existing activity that requires additional resources of the type already in use would not be captured by the resource criterion; however, a new type of resource that indicates a new activity could be a new organizational division, or newly contracted vendors for a different type of service. While expansion of an existing activity is not, per se, a new activity, that expansion may indicate a new activity if that enlargement expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise.

Section 1253.3(a)(3)(iv) of the proposed rule provides that a new activity can be identified if it would substantially impact the mortgage finance system, the Enterprise's safety and soundness, compliance with the Enterprise's authorizing statute, or the public interest. FHFA expects that the Enterprise will identify as a new activity an activity which would raise these systemic, statutory, or regulatory issues.

Section 1253.3(a)(3)(v) and (vi) of the proposed rule provides the final two categories for identifying a new activity: (1) A pilot; or (2) An activity resulting from a pilot that is described by one of the criteria discussed above. The Interim Final Rule also specifically identified pilots as being in scope of a new activity. *See* Interim Final Rule, Appendix to 12 CFR part 1253, Section (A)(1). The proposed rule would define a pilot to be an activity that has a defined term and scope for purposes of understanding the viability of a new offering. For purposes of inclusion in the proposed rule, a pilot

includes activities called by various other names such as testing initiative, test and learn, or temporary authorization. Unless a pilot falls into one of the exclusions set forth at proposed § 1253.3(b), FHFA would expect a Notice of New Activity to be submitted even if the pilot did not trigger one of the other paragraphs of proposed § 1253.3(a), such as increasing the level of risk to the Enterprise or requiring new resources. Despite possible limited size or financial impact on the Enterprises and the markets, pilots sometimes have an outsized effect in other areas such as furthering technological change or concerning the Enterprise mission. An additional variable is that pilots often extend for lengthy periods of time and sometimes change form as a natural consequence of conducting exploratory types of business.

If an Enterprise decides that an activity should emerge from its pilot status to be a continuing activity, an Enterprise should evaluate whether that activity triggers one of the criteria discussed above and, if so, should again submit a Notice of New Activity. An activity emerging from a pilot is not an “enhancement, alteration or modification” to the existing pilot but a new activity that needs to be submitted in a new Notice of New Activity. As discussed below in Section III.G, regarding the content of a Notice of New Activity, the Enterprise should plan to include as part of the Notice, an analysis on the effectiveness of, and modifications to, the pilot as part of its rationale for a broader offering. This will assist FHFA in its review as to whether the activity emerging from the pilot requires a public notice and comment review.

FHFA recognizes that providing examples to help explain when FHFA would consider an activity to be a new activity is useful for commenters. The examples given are for illustrative purposes only and should not be construed as a position that FHFA

may take on whether an activity is permissible under the Enterprise's authorizing statute, or would be a new activity or a new product under the proposed rule. All the examples presume that the activity meets the baseline criteria that are set out in proposed § 1253.3.

1. *Example - Activity which is a business line offering*

Currently, the Enterprises do not acquire personal property loans for manufactured housing (chattel loans). Under the proposed rule, if an Enterprise planned to offer a chattel loan product offering, such an activity would fall within at least three categories under proposed § 1253.3. To support such an offering, an Enterprise would need to develop new policies or modify existing ones, as well as implement new processes or infrastructure, in order to acquire and securitize chattel loans. This activity would expand the scope or increase the level of credit risk, market risk, or operational risk to the Enterprise given the nature of the underlying collateral. Also, this is an activity that would involve a new category of collateral because it is not titled as real estate, and possibly a new category of borrowers, investors, or counterparties. A chattel loan product may also have a substantial impact on the public interest because of the affordable nature of manufactured housing and the potential for enhancing consumer protections through the origination and servicing requirements established by an Enterprise. In this example, the Enterprise must submit a Notice of New Activity prior to offering this product to the market.

2. *Example - Activity which is a pilot*

While in conservatorship, the Enterprises have previously engaged in pilots within their multifamily business lines that facilitated financing for institutional operators of single-family rental (SFR) properties; they are not actively engaged in this type of pilot

currently. Under the proposed rule, if an Enterprise wanted to re-engage in this type of pilot, the category for pilots would trigger the requirement to submit a Notice of New Activity to FHFA.

Should an Enterprise decide to offer a product that facilitated the financing for institutional operators of SFR properties, there are other categories under proposed § 1253.3 that would trigger the requirement to submit a Notice of New Activity to FHFA. For instance, such an offering for SFR properties would not only introduce a new type of collateral for an Enterprise's multifamily business line, but also would have an impact on the public interest because the product offering could place constraints on the single-family mortgage market by reducing the inventory of single-family homes available for purchase in a particular community.

3. *Example - Activity which is a loan product previously offered but not offered as of the effective date of the final rule*

In December 2008, Fannie Mae retired its reverse mortgage product Home Keeper, and in October 2010 it stopped acquiring the U.S. Department of Housing and Urban Development's (HUD) Home Equity Conversion Mortgage (HECM).⁶ Under the proposed rule, if Fannie Mae wanted to resume acquisition of a reverse mortgage product after the effective date of the final rule, at least two of the categories under proposed § 1253.3 would trigger the requirement to submit a Notice of New Activity to FHFA. In order to resume acquisitions, Fannie Mae would have to re-establish the policies, processes, and infrastructure to support new acquisitions. The activity would also include

⁶ Fannie Mae still has Home Keeper mortgages and HECMs in its retained portfolio and maintains servicing requirements for these mortgages in its Servicing Guide. Freddie Mac did not offer a reverse mortgage product.

an increased level of credit risk, market risk, or operational risk to the Enterprise. This example illustrates that even though an Enterprise previously offered a product and then stopped offering it prior to the effective date of the final rule, the Enterprise must submit a Notice of New Activity to FHFA prior to offering the product to the market.

1. *FHFA requests comments on the scope of the criteria for identifying a new activity, specifically on whether they are sufficient for capturing an activity that would require an Enterprise to submit Notice of a New Activity to FHFA.*

2. *FHFA requests comments on whether the criteria used to identify a new activity are unambiguous and transparent or, if not, how they can be improved.*

C. *Exclusions from New Activity and New Product*

Section 1253.3(b) of the proposed rule would set forth those activities, as defined by the Act and the regulation, that are excluded from the requirements of the proposed rule. For purposes of consistency and practical application, the proposed rule provides that the exclusions apply when an activity is being evaluated for whether it is a new activity. Since only an activity that meets the criteria for a new activity is required to be evaluated as a new product, the exclusions apply to new products as well. For all but one of the exclusions, no notice or submission to FHFA is required prior to engaging in these activities because these activities are outside the scope of the prior approval requirements.

The Safety and Soundness Act and the Interim Final Rule expressly exclude activities involving the Enterprises respective automated underwriting systems in existence as of July 30, 2008 (Fannie Mae's Desktop Underwriter and Freddie Mac's Loan Product Advisor), including any upgrade to the technology, operating system, or

software to operate the underwriting system. Since July 30, 2008, the Enterprises have made many upgrades to their automated underwriting systems and these upgrades fall within the exclusion.

However, technology systems which are not part of the automated underwriting systems would not fall into the exclusion. For example, the technology systems that evaluate the appraised value of a property, such as Fannie Mae's Collateral Underwriter (CU) or Freddie Mac's Home Value Explorer (HVE) or Loan Collateral Advisor, would not fall within this exclusion. These particular technologies predate the effective date of the proposed rule (when it is finalized) and so are outside the rule's scope. However, if changes are made to these systems which demonstrate one of the criteria of a new activity (such as a new type of data), those changes would need to be submitted in a Notice of New Activity.

The Safety and Soundness Act and proposed rule at proposed § 1253.3(b)(2) also exclude Enterprise activities that involve any modification to the Enterprise's mortgage product terms and conditions or mortgage underwriting criteria, provided that the modifications do not alter the underlying transaction to include services or financing for anything other than residential mortgages. For example, if an Enterprise modifies the maximum loan-to-value ratio for certain product offerings, such a modification would be excluded from the requirements of the proposed rule.

The Safety and Soundness Act and proposed rule at proposed § 1253.3(b)(3) excludes activities that are "substantially similar" to the automated underwriting systems and mortgage terms activities discussed above. As a guideline, the proposed rule would explain that if the activity is described by one or more of the criteria describing a new

activity at proposed § 1253.3(a)(3)(i) through (iv) – such as requiring a new type of data or a new policy – the activity is not substantially similar and the Enterprise should submit a Notice of New Activity for review under the provisions of this section and may not proceed with the new activity except pursuant to the requirements in this section.

Section 1253.3(b)(5) of the proposed rule would include an additional regulatory exclusion, also included in the Interim Final Rule, which is for “[a]ny Enterprise business practice, transactions, or conduct performed solely to facilitate the administration of an Enterprise’s internal affairs to conduct its business.” This exclusion clarifies that administration of the Enterprise’s internal affairs are not subject to the proposed rule. This exclusion, however, is limited to an Enterprise’s internal affairs – such as human resources – and does not exclude activity which ultimately impacts an offering to the public. No notice or submission to FHFA is required prior to engaging in the above described exclusions.

The final exclusion at proposed § 1253.3(b)(4) is an exclusion for an activity substantially similar to an approved new product. Unlike the exclusions described above, notice to FHFA is required prior to engaging in an activity falling within the scope of this exclusion. A detailed discussion of this exclusion is provided in Section F below.

3. FHFA requests comments on how the exclusion for the automated underwriting systems as set forth in the Safety and Soundness Act should be applied to related but independent systems and to future technology systems.

4. FHFA requests comments on whether the exclusions should be narrowed or expanded, consistent with the Safety and Soundness Act.

D. *Public Notice and Comment for a New Product Review*

Whether a new activity is a new product depends on whether the Director determines that the new activity merits public notice and comment on matters of: compliance with the authorizing statutes of Fannie Mae or Freddie Mac; safety and soundness of the Enterprise or the mortgage finance system; or serving the public interest. Proposed § 1253.4 would set forth the factors that the Director may consider when determining whether a new product is in the public interest. These factors remain unchanged from the Interim Final Rule, apart from the deletion of the factor which stated “other alternatives for providing the new product” (Interim Final Rule, 12 CFR 1253.4(b)(3)(iv)), because that information is already requested in other factors. The Director retains the discretion to include other factors determined to be appropriate to consider during the approval process. The factors are ones the public should take into consideration in compiling their comments about a potential new product to inform the Director.

5. FHFA requests comment on any other factors FHFA should include in the consideration of whether a new product is in the public interest.

E. *Process for Submission and Review of Notice of New Activity*

Section 1253.5 of the proposed rule would establish the requirements for submission of a Notice of New Activity, and the review and determination process by FHFA, incorporating the timelines established by the Safety and Soundness Act. Before commencing any new activity, an Enterprise must submit to FHFA a written Notice of New Activity, the content of which is described in proposed § 1253.9. An Enterprise includes any of its affiliates, *see* 12 CFR 1201.1, and, if the new activity is to be offered

by an affiliate, either the Enterprises or their affiliates may submit the Notice of New Activity. The Notice of New Activity provides a mechanism for the Director to determine whether the new activity is a new product in accordance with 12 U.S.C. 4541 and 12 CFR part 1253.

A Notice of New Activity will not be considered complete and received for processing until the information required by proposed § 1253.9 has been submitted, including any follow-up information required by FHFA. Section 1253.5(b) of the proposed rule would provide that nothing in the rule limits or restricts FHFA from reviewing the Notice of New Activity under any other applicable regulation or statute, as part of FHFA's authorities to review for safety and soundness and for consistency with an Enterprise's statutory mission. FHFA may conduct such a review as part of its determination that the submission is complete. For example, if a proposed new activity necessitated a review for compliance with the Uniform Mortgage-Backed Security regulation (12 CFR part 1248), being in receipt of the information to be able to conduct that review may be part of FHFA's determination that the submission is complete and has been received.

The proposed rule would provide that an Enterprise may not commence a new activity unless the Director makes a written determination that the new activity is not a new product within 15 days, or the 15 days pass and no determination is made. If the Director determines that the new activity is a new product, the Enterprise must await approval of the new product under proposed § 1253.6. If there is a determination that the new activity is not a new product, or the 15 days pass with no determination, the Enterprise may begin the new activity, however undertaking the new activity may be

subject to terms, conditions, or limitations as the Director may establish.

F. *New Product Approval*

Section 1253.6 of the proposed rule provides for public notice and comment of a new product. If the Director determines that the new activity is a new product, the proposed rule would provide that FHFA publish a public notice soliciting comments on the new product for a 30-day period. FHFA would include in that public notice enough information from the Notice of New Activity to sufficiently describe the new product, so that the public can provide comment. The public notice will state the closing date of the public comment period and will provide instructions for submission of public comment. As is the practice with other requests for information and proposed rules, comments submitted by the public on a new product will be made public and are posted on an FHFA website. The proposed rule does not include the confidentiality provision from the Interim Final Rule (§ 1253.5) as the proposed rule follows common practice that public comments will be made public. The Interim Final Rule confidentiality provision had also applied to the Enterprises' submission of information; in the proposed rule, FHFA will determine what information is necessary for the public notice.

In making the determination on approval of the new product, the Director will consider all public comments received by the closing date of the comment period. The proposed regulation incorporates the Safety and Soundness Act's approval requirements and would provide that the Director may approve the new product if the Director determines that the new product: in the case of Fannie Mae, is authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or in the case of Freddie Mac, is authorized under 12 U.S.C. 1454(a)(1), (4), or (5); is in the public interest; and is

consistent with the safety and soundness of the Enterprise or the mortgage finance system.

In accordance with the statutory timelines, the Director will make a determination on the new product no later than 30 days after the close of the public comment period. If no determination is made within that time frame, the Enterprise may offer the new product. As with a new activity, a new product may be subject to any terms, conditions, or limitations as the Director may establish. Also, as with a new activity, the Director's authority to review for safety and soundness or consistency with the Enterprise's statutory mission is not compromised by any time limit provided for in the Act and reflected in the proposed rule.

Section 1253.7 of the proposed rule incorporates the statutory provision concerning making a new product available without first seeking public comment. Section 1321(c) of the Safety and Soundness Act (12 U.S.C. 4541(c)) authorizes the Director to grant "temporary approval" of the new product if exigent circumstances exist that make the delay associated with seeking public comment contrary to public interest. *See* section 1321 paragraphs (c)(2) through (c)(4) of the Safety and Soundness Act (12 U.S.C. 4541(c)(2) through (c)(4)). Accordingly, once FHFA determines that a new activity is a new product, FHFA will publish notice, along with a description of the new product for a 30-day public comment period, unless the Director determines that delay associated with first seeking public comment is contrary to public interest. The proposed rule would provide that where the Director determines that exigent circumstances exist such that delay associated with seeking public comment is contrary to public interest, the Director may consider and temporarily approve the new product without providing an

advance public comment period. The Enterprise may request a Temporary Approval, or FHFA may act on its own initiative. The Director may impose terms, conditions or limitations on the Temporary Approval, and will also provide for a public comment period after granting the Temporary Approval.

Section 1253.8 of the proposed rule would describe the scope of the “substantially similar” exclusion for approved new products that appears at proposed § 1253.3(b)(4). The Safety and Soundness Act provides an exclusion to its requirements for prior approval for “other activities that have been approved by the Director in accordance with this section.” *See* section 1321(e) of the Safety and Soundness Act (12 U.S.C. 4541(e)). Once the Director determines that a new activity submitted in a Notice of New Activity is a new product, the new product will be published in a notice soliciting public comments. The Safety and Soundness Act provides that an Enterprise may offer a product if the Director approves the product, or if the Director does not make a determination within 30 days after the end of the public comment period; this requirement is incorporated in the proposed rule at proposed § 1253.6(c) and (g). *See* section 1321(e) of the Safety and Soundness Act (12 U.S.C. 4541(e)). The proposed rule would set out how the substantially similar exclusion for approved new products operates for the two types of circumstances leading to the offering of a new product for both the Enterprise that originally submitted the Notice of New Activity and the other Enterprise.

Section 1253.8 of the proposed rule would provide that either Enterprise may offer a new product that the Director has approved for the other Enterprise, or a new product that may be offered because no determination was made within the time period. This section covers both an activity which is the same as the original new product, and an

activity that is substantially similar to the original new product. In either case, public notice and comment is not required because public notice and comment has already occurred in connection with the original offering. An Enterprise must notify FHFA of its intent to offer the new product at least 15 days prior, so that FHFA may exercise its regulatory and supervisory responsibilities. The notice is an abbreviated notice (not a Notice of New Activity) and the proposed content is the activity name and description, and, if the activity is substantially similar, why the Enterprise believes that to be the case. Notice is required here, unlike for the other exclusions which do not require notice, to ensure the product is the same or substantially similar to the original product and to ensure compliance with any conditions the Director may have placed on offering the original new product.

The Director may determine that the activity is not substantially similar to the original new product. If that is the case, the Enterprise would be required to submit a Notice of New Activity and proceed through the full approval process. As a guidepost, the proposed rule explains that if an activity is described by one or more of the criteria for determining whether an activity is a new activity – such as involving a new policy or a new category of borrower – the Director may determine that the activity is not substantially similar. This “substantially similar” exclusion does not cover a new activity which is not determined by the Director to be a new product as that new activity does not go through the public comment and approval process. This is consistent with the provision in the Interim Final Rule which limited this exclusion to the definition of “New product.” *See* Interim Final Rule § 1253.2.

Figure 1: Decision Tree below describes the decision paths for an original new product, for the same new product offered by the other Enterprise, and for a substantially similar new product for either Enterprise.

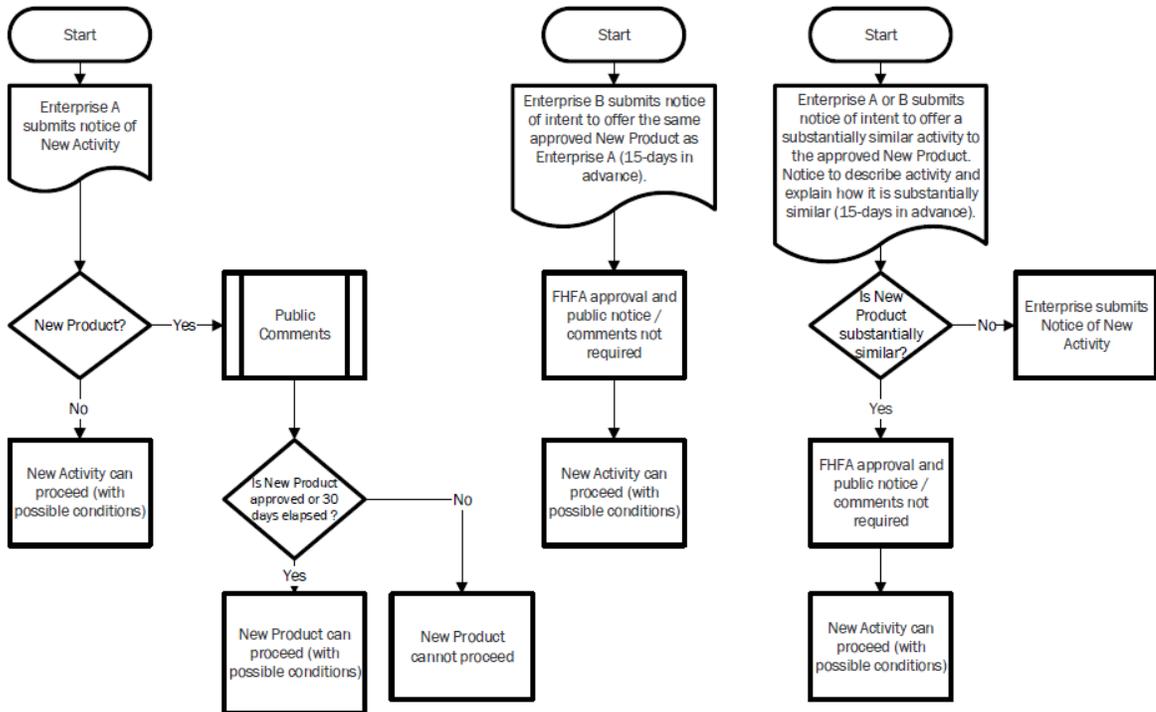


Figure 1: Decision Tree

6. *FHFA requests comment on whether the scope of the exclusion described in proposed § 1253.8 is too broad or too narrow, given the requirements of the Safety and Soundness Act.*

G. *Notice of New Activity*

The scope of the information required in a Notice of New Activity, as set out in proposed § 1253.9, serves to allow FHFA to: (1) Assess the impact, risks, and benefits of a new activity; and (2) Determine whether the new activity is a new product that merits public notice and comment. Sufficient information is needed to have a complete assessment and understanding of associated risks to support adequate oversight and

control, and to weigh those risks against the benefits to public interest. Should FHFA determine that a new activity is a new product that merits public notice and comment, the content of the Notice of New Activity will also provide the public the information it needs to review and meaningfully comment on the proposed new product.

In the Interim Final Rule, the content for a Notice of New Activity is set forth in a form in the Appendix to 12 CFR part 1253, which includes instructions for providing the required content. The Appendix also includes additional general and supplemental instructions to aid the Enterprise in identifying an activity and new product, and to complete the form.

In the proposed rule, FHFA seeks to streamline and simplify the content and submission of a Notice of New Activity by incorporating the content into the regulation text rather than in a specific form as part of an appendix to the regulation. This approach also allows for more flexibility in how the information is submitted by an Enterprise and received by FHFA. Requiring a static form might be inconsistent with the most effective means for the Enterprise to present data, images, or other information. The proposed rule also consolidates interrelated content from the sets of instructions in the Interim Final Rule for clarity and to reduce duplication.

For example, the Interim Final rule requires a separate description of unusual and unique characteristics of the new activity (Interim Final Rule, 12 CFR part 1253, Notice of New Activity Form, Item 3), which FHFA would expect an Enterprise to describe under the requirement for a complete and specific description of the new activity under proposed § 1253.9(a)(2). Another area of consolidation in the proposed rule involves the information that must be provided on the business requirements for a new activity, which

includes a description of the technology requirements, the business unit(s) involved and reporting lines, as well as any affiliation or subsidiary relationships, any third-party relationships, and the roles of each. In the Interim Final Rule there are three distinct items on the form requiring a description of: (1) The business unit(s) and responsible personnel for the new activity (Item 5); (2) Relationships with non-secondary market participants (Item 9); and (3) Whether an acquisition by an Enterprise is involved with the new activity (Item 11). FHFA believes that streamlining the content of a Notice of New Activity will facilitate an Enterprise's compliance with the requirements of the regulation without impeding FHFA's ability to determine whether a new activity is a new product that merits public notice and comment.

7. FHFA requests comment on the content of a Notice of New Activity, specifically whether the requirements are clearly stated and sufficient for evaluating a New Activity.

8. FHFA requests comment on whether it should retain a pdf form for the Notice of New Activity similar to the form included in the Appendix to the Interim Final Rule.

H. Preservation of Authority

Section 1253.10 of the propose rule would confirm that the Director's authority is preserved. The Director's exercise of the Safety and Soundness Act's provisions on prior approval authority for products in no way restricts the safety and soundness authority of the Director over all new and existing products or activities, or the authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an Enterprise. *See* section 1321(f) of the Safety and Soundness Act (12 U.S.C. 4541(f)). Under this

authority, for example, the Director could find that certain conditions or terms are appropriate for an ongoing activity. This section would also inform the Enterprise that failure to comply with the provisions of this regulation may result in FHFA requiring the Enterprise to submit a Notice of New Activity subject to the review and approval requirements of this section, without regard to whether the Enterprise has already commenced such activity, or taking enforcement actions, including pursuant to 12 U.S.C. 4631 (orders to cease-and-desist), 12 U.S.C. 4632 (temporary orders to cease-and-desist), and 12 U.S.C. 4636 (civil money penalties), or other steps authorized by law.

9. *FHFA requests comment on aspects of the proposed Prior Approval for Enterprise Products rule that are changes or deletions from the Interim Final Rule.*

10. *In addition to the questions asked above, FHFA requests comments on any aspect of the proposed Prior Approval for Enterprise Products rule.*

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) requires that a regulation that has a significant economic impact on a substantial number of small entities, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C 605(b)). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation only applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the

Regulatory Flexibility Act.

V. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 1253

Government-sponsored enterprises, Mortgages, New activities, New products.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authorities of 12 U.S.C. 4526 and 12 U.S.C. 4541, FHFA proposes to amend Chapter XII of Title 12, Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—ENTERPRISES

1. Revise part 1253 to read as follows:

PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

Sec.

1253.1 Purpose and authority.

1253.2 Definitions.

1253.3 New Activity description and exclusions.

1253.4 New Product.

1253.5 Review of Notice of New Activity.

1253.6 New Product approval.

1253.7 Temporary approval of a New Product.

1253.8 Availability of an approved New Product and substantially similar approved New Product to the other Enterprise.

1253.9 Notice of New Activity.

1253.10 Preservation of authority.

Authority: 12 U.S.C. 4526; 12 U.S.C. 4541.

§ 1253.1 Purpose and authority.

The purpose of this part is to establish policies and procedures implementing the prior approval authority for Enterprise products, in accordance with section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541), as amended (Safety and Soundness Act).

§ 1253.2 Definitions.

For purposes of this part:

Authorizing statute means the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, as applicable.

Credit risk is the potential that a borrower or counterparty will fail to meet its obligations in accordance with agreed terms. Credit risk includes the decline in measured quality of a credit exposure that might result in increased capital costs, provisioning expenses, and a reduction in economic return.

Days means calendar days.

Market risk means the risk that the market value, or estimated fair value if the market value is not available, of a regulated entity's portfolio will decline as a result of changes in interest rates, foreign exchange rates, or equity or commodity prices.

New Activity has the meaning provided in § 1253.3.

New Product has the meaning provided in § 1253.4.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people, or systems, or from external events, including all direct and indirect economic losses related to legal liability. This includes reputational risk, which is the potential for substantial negative publicity regarding an institution's business practices.

Pilot means an activity that has a defined term and scope for purposes of

understanding the viability of a new offering. A pilot may also be referred to as testing initiative, test and learn, temporary authorization, or other names.

1253.3 New Activity description and exclusions.

(a) A New Activity is an activity that meets the requirements of this section:

(1) An activity which is a business line, business practice, offering or service, including guarantee, financial instrument, consulting or marketing, that the Enterprise provides to the market either on a standalone basis or as part of a business line, business practice, offering or service; and

(2) An activity which:

(i) Is not engaged in by the Enterprise as of the effective date of this section, or

(ii) Is an enhancement, alteration, or modification to an existing activity that the Enterprise currently engages in as of the effective date of this section; and

(3) An activity that is described by one or more of the following paragraphs:

(i) Activity which requires one or more of the following: a new type of resource, a new type of data, a new policy or modification to an existing policy, a new process or infrastructure.

(ii) Activity that expands the scope or increases the level of credit risk, market risk or operational risk to the Enterprise.

(iii) Activity that involves a new category of borrower, investor, counterparty, or collateral.

(iv) Activity that would substantially impact the mortgage finance system, safety and soundness of the Enterprise, compliance with the Enterprise's authorizing statute, or the public interest as identified in § 1253.4(b).

(v) Activity that is a pilot.

(vi) Activity resulting from a pilot that is described by one or more of paragraphs (a)(3)(i) through (iv) of this section.

(b) A New Activity excludes an activity which is described as:

(1) The automated loan underwriting system of an Enterprise, including any upgrade to the technology, operating system, or software to operate the underwriting system.

(2) Any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an Enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing.

(3) Any activity that is substantially similar to the activities described in paragraph (b)(1) or (2) of this section. If the activity is described by one or more of paragraphs (a)(3)(i) through (iv) of this section, the activity is not substantially similar and the Enterprise must submit a Notice of New Activity for review under the provisions of this section and may not proceed with the New Activity except pursuant to the requirements in this section.

(4) Pursuant to the requirements of § 1253.8, any activity undertaken by an Enterprise that is the same as, or substantially similar to, a New Product that the Director has approved for the other Enterprise under § 1253.6(a) through (e), or a New Product that is otherwise available to the other Enterprise under § 1253.6(g).

(5) Any Enterprise business practice, transactions, or conduct performed solely to facilitate the administration of an Enterprise's internal affairs to conduct its business.

§ 1253.4 New Product.

(a) A New Product is any New Activity that the Director determines merits public notice and comment about whether it is:

(1) In the case of Fannie Mae, authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or

(2) In the case of Freddie Mac, authorized under 12 U.S.C. 1454(a)(1), (4), or (5); and

(3) In the public interest; and

(4) Consistent with the safety and soundness of the Enterprise or the mortgage finance system.

(b) The factors that the Director may consider when determining whether a New Product is in the public interest are:

(1) The degree to which the New Product might advance any of the purposes of the Enterprise under its authorizing statute;

(2) The degree to which the New Product serves underserved markets and housing goals as set forth in section 1335 of the Safety and Soundness Act (12 U.S.C. 4565);

(3) The degree to which the New Product is being or could be supplied by other market participants;

(4) The degree to which the New Product promotes competition in the marketplace or, to the contrary, would result in less competition;

(5) The degree to which the New Product overcomes natural market barriers or inefficiencies;

(6) The degree to which the New Product might raise or mitigate systemic risks to

the mortgage finance or financial system;

(7) The degree to which the New Product furthers fair housing and fair lending;

and

(8) Such other factors as determined appropriate by the Director.

§ 1253.5 Review of Notice of New Activity.

(a) Before commencing a New Activity, an Enterprise must submit a Notice of New Activity to FHFA. FHFA will evaluate the Notice of New Activity to determine if the submission contains sufficient information for the Director to make a determination whether the New Activity is a New Product subject to prior approval. In support of its Notice of New Activity, the Enterprise shall submit information as described under § 1253.9. The Enterprise shall provide thorough, complete, and specific information such that the public will be able to provide fully informed comments if the Director determines the New Activity to be a New Product. Once FHFA makes the determination that the submission is complete, FHFA will notify the Enterprise that the submission is “received” for purposes of 12 U.S.C. 4541(e)(2)(B).

(b) Nothing in this regulation limits or restricts FHFA from reviewing a Notice of New Activity under any other applicable law, under the Director’s authority to review for safety and soundness, or to determine whether the activity complies with the Enterprise’s authorizing statute. FHFA may conduct such a review as part of its determination that the Notice of New Activity submission is complete.

(c) No later than 15 days after FHFA notifies the Enterprise that the submission is received, the Director will make a determination on the Notice of New Activity and will notify the Enterprise accordingly. If the Director determines that the New Activity is a

New Product, the Enterprise must await approval or disapproval of the New Product under § 1253.6.

(d) If the Director determines that the New Activity is not a New Product, or if after passage of 15 days the Director does not make a determination whether the New Activity is a New Product, the Enterprise may commence the New Activity. The Director may establish terms, conditions, or limitations on the Enterprise's engagement in the New Activity as the Director determines to be appropriate and with which the Enterprise must comply in order to engage in the New Activity.

(e) If the Director does not make a determination within the 15-day period, the absence of such determination does not limit or restrict the Director's safety and soundness authority or the Director's authority to review the New Activity to determine that the activity is consistent with the Enterprise's authorizing statute.

§ 1253.6 New Product approval.

(a) If the Director determines that the New Activity is a New Product, FHFA shall publish a public notice soliciting comments on the New Product for a 30-day period.

(1) The public notice will describe the New Product. FHFA will include such information from the Notice of New Activity as to provide the public with sufficient information to comment on the New Product. The public notice will state the closing date of the public comment period and will provide instructions for submission of public comment.

(2) The Director will consider all public comments received by the closing date of the comment period.

(3) In computing the 30-day public comment period, FHFA includes the day on

which the public notice is published, from which the period commences, and includes the last day of the period, regardless of whether it is a Saturday, Sunday, or legal holiday.

(b) No later than 30 days after the end of the public comment period, the Director will provide the Enterprise with a written determination on whether it may proceed with the New Product. The written determination will specify the grounds for the Director's determination.

(c) The Director may approve the New Product if the Director determines that the New Product:

(1) In the case of Fannie Mae, is authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or

(2) In the case of Freddie Mac, is authorized under 12 U.S.C. 1454(a)(1), (4), or (5); and

(3) Is in the public interest; and

(4) Is consistent with the safety and soundness of the Enterprise or the mortgage finance system.

(d) The Director may consider factors provided in § 1253.4(b) when determining whether a New Product is in the public interest.

(e) The Director may establish terms, conditions, or limitations on the Enterprise's offering of the New Product with which the Enterprise must comply in order to offer the New Product.

(f) If the Director disapproves the New Product, the Enterprise may not offer the New Product.

(g) If the Director does not make a determination within 30 days after the end of

the public comment period, the Enterprise may offer the New Product. The absence of such a determination within 30 days does not limit or restrict the Director's safety and soundness authority or the Director's authority to review the New Product to determine that the product is consistent with the Enterprise's authorizing statute.

(h) The Director may request any information in addition to that supplied in the completed Notice of New Activity if, as a result of public comment or otherwise in the course of considering the Notice of New Activity, the Director believes that the information is necessary for the Director's decision. The Director may disapprove a New Product if the Director does not receive the information requested from the Enterprise in sufficient time to permit adequate evaluation of the information within the time periods set forth in this section.

§ 1253.7 Temporary approval of a New Product.

The Director may approve a New Product without first seeking public comment as described in § 1253.6 if:

(a) The Enterprise submits a specific request for Temporary Approval that describes the exigent circumstances that make the delay associated with a 30-day public comment period contrary to the public interest and the Director determines that exigent circumstances exist and that delay associated with first seeking public comment would be contrary to the public interest; or

(b) Notwithstanding the absence of a request by the Enterprise for Temporary Approval, the Director determines on the Director's own initiative that there are exigent circumstances that make the delay associated with first seeking public comment contrary to the public interest.

(c) The Director may impose terms, conditions, or limitations on the Temporary Approval to ensure that the New Product offering is consistent with the factors in § 1253.6(c).

(d) If the Director grants Temporary Approval, the Director will notify the Enterprise in writing of the Director's decision and include the period for which it is effective and any terms, conditions or limitations. Upon granting of Temporary Approval, FHFA will also publish the request for public comment to begin the process for permanent approval.

(e) If the Director denies a request for Temporary Approval, the Director will notify the Enterprise in writing of the Director's decision and will evaluate the New Product in accordance with this section.

§ 1253.8 Availability of an approved New Product and substantially similar approved New Product to the other Enterprise.

(a) Either Enterprise may offer a New Product that the Director has approved for the other Enterprise under § 1253.6(a) through (e), or a New Product that is otherwise available to the other Enterprise under § 1253.6(g).

(1) An Enterprise shall notify FHFA of its intent to begin offering the New Product at least 15 days prior to offering the New Product.

(2) The notification is not required to be a Notice of New Activity. The notification shall include the name of the New Product and a complete and specific description.

(3) Public notice and comment is not required in connection with this offering.

(b) Either Enterprise may offer an activity that is substantially similar to a New

Product that the Director has approved for the other Enterprise under § 1253.6(a) through (e), or a New Product that is otherwise available to the other Enterprise under § 1253.6(g).

(1) An Enterprise shall notify FHFA of its intent to begin offering the activity that is substantially similar to the New Product at least 15 days prior to offering the activity that is substantially similar to the New Product.

(2) The notification is not required to be a Notice of New Activity. The notification shall include the name of the activity that is substantially similar to the New Product and a complete and specific description. The notification shall include a description of why the Enterprise believes the activity is substantially similar to the New Product.

(3) Public notice and comment is not required in connection with this offering.

(4) If the activity is described by one or more of the paragraphs at § 1253.3(a)(3)(i) through (iv), the Director may determine that the activity is not substantially similar. If the Director determines an activity is not substantially similar, the Enterprise must submit a Notice of New Activity for review under the provisions of this section and may not proceed with the New Activity except pursuant to the requirements in this section.

§ 1253.9 Notice of New Activity.

(a) A Notice of New Activity must provide the following items of information and provide appropriate supporting documentation. The corresponding paragraph number should be listed with the relevant information provided:

(1) Name of the New Activity.

(2) Complete and specific description of the New Activity.

(3) Identify under which paragraphs of § 1253.3 the New Activity is described.

(4) State the Enterprise's view as to whether the New Activity is a New Product.

(5) Describe the business rationale, the intended market, the business line, and what products are currently being offered or propose to be offered under such business line.

(6) State the anticipated commencement date, and duration, for the New Activity or New Product. Describe and provide analysis, including assumptions, development expenses, any applicable fees, expectations for the impact of and projections for the projected quarterly size (for example, in terms of cost, personnel, volume of activity, or risk metrics) of the New Activity or New Product for at least the first 12 months of deployment. If the New Activity is a pilot, include the parameters that end the pilot, such as duration, volume of activity, and performance. If the New Activity is the result of a pilot, include an analysis on the effectiveness of the pilot that describes the pilot objectives and success criteria; volume of activity; performance; risk metrics and controls; and the modifications made for a broader offering and rationale. Describe any market research performed relating to the New Activity or New Product.

(7) Describe, explain and provide analysis, including assumptions, expectations for the impact of, and projections for the anticipated impact to earnings and capital of the New Activity or New Product on a quarterly basis for the first 12 months from the New Activity or New Product's commencement.

(8) Describe the impact of the New Activity or New Product on the risk profile of the Enterprise. Describe key controls for the following risks: credit, market and operational.

(9) Describe the business requirements for the New Activity or New Product including technology requirements. Describe the Enterprise business units involved in conducting the New Activity or New Product, including any affiliation or subsidiary relationships, any third-party relationships, and the roles of each. Describe the reporting lines and planned oversight of the New Activity or New Product.

(10) Provide a fair lending self-evaluation of the New Activity or New Product. The fair lending self-evaluation should, at a minimum, include data on the predicted impact of the New Activity or New Product for protected class categories if such an impact is expected, a summary of reasonable alternatives considered, and, if applicable, the business justification for the New Activity or New Product.

(11) Provide an analysis and legal opinions as to whether the New Activity is a New Product and whether it is:

(i) In the case of Fannie Mae, authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or

(ii) In the case of Freddie Mac, authorized under 12 U.S.C. 1454(a)(1), (4), or (5).

(12) Provide copies of all notice and application documents, including any application for patents or trademarks, the Enterprise has submitted to other federal, state or local government regulators relating to a New Activity or New Product.

(13) Describe the impact of the New Activity or New Product on the public interest and provide information to address the factors listed in § 1253.4(b).

(14) Describe how the New Activity or New Product is consistent with the safety and soundness of the Enterprise and the mortgage finance system.

(15) Explain any accounting treatment proposed for the New Activity and New Product.

(b) FHFA may require an Enterprise to submit such further information as the Director deems necessary to review the submission or to make a determination, at the time of the original submission or anytime thereafter.

(c) An Enterprise shall certify, through an executive officer, that any filing or supporting material submitted to FHFA pursuant to regulations in this part contains no material misrepresentations or omissions. FHFA may review and verify any information filed in connection with a Notice of New Activity.

§ 1253.10 Preservation of authority.

(a) The Director's exercise of the Director's authority pursuant to the prior approval authority for products under 12 U.S.C. 4541, and this regulation, in no way restricts:

(1) The safety and soundness authority of the Director over all new and existing products or activities; or

(2) The authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the authorizing statute of an Enterprise.

(b) Failure to comply with the provisions of this section may result in any of the following actions:

(1) FHFA may require the Enterprise to submit a Notice of New Activity subject

to the review and approval requirements of this section, without regard to whether the Enterprise has already commenced such activity;

(2) FHFA may take enforcement actions, including pursuant to 12 U.S.C. 4631 (orders to cease-and-desist), 12 U.S.C. 4632 (temporary orders to cease-and-desist), and 12 U.S.C. 4636 (civil money penalties); and

(3) FHFA may take any other steps authorized by law to address the Enterprise's failure to comply.

Mark A. Calabria
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[FR Doc. 2020-23452 Filed: 11/6/2020 8:45 am; Publication Date: 11/9/2020]