

January 8, 2021

Charlie Oppler
2021 President

Bob Goldberg
Chief Executive Officer

The Honorable Mark Calabria
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20024

Dear Director Calabria:

ADVOCACY GROUP

Shannon McGahn
Chief Advocacy Officer

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), thank you for your ongoing efforts to improve the operations and resiliency of Fannie Mae and Freddie Mac (Enterprises). The notice of proposed rulemaking on *prior approval of new products* is an important step and update to the *Interim Final Rule for Prior Approval for Enterprise Products* (Interim Final Rule).

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 25,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock and making it available to the widest range of potential homebuyers.

Homeownership is an integral part of the American Dream and the Enterprises play a vital role in supporting liquidity in the mortgage market that homebuyers need. Innovation to meet the challenges of a dynamic housing market and national makeup are at the heart of the enterprises charter mission. This rule is critical to allowing the enterprises to innovate in a safe and sound manner.

A Rule to Enable Innovation

In the proposed rule, the Federal Housing Finance Agency's (FHFA) lays out circumstances when an Enterprise must submit notice to the Director of a new activity or product for review. Furthermore, it outlines how, in compliance with section 1321(b) of the *Safety and Soundness Act* (12 U.S.C. 4541(b)), the Enterprise offering the new product or service must demonstrate that it 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.



Changes to Foster Innovation and Safety and Soundness

NAR previously submitted [comments](#) in August of 2009 in response to the FHFA's request for comments on the interim final rule. NAR raised a number of concerns, some of which were adopted and some of which remain outstanding and are joined by additional concerns here:

- The general instructions of the interim final rule for the notice of new activity (NNA) advise that an Enterprise may consult with FHFA to seek clarification and information about a potential request. This thoughtful approach should be retained in the final regulation, giving the Enterprises the right to consult with the FHFA to discuss and resolve questions related to potential new products and activities. This consultation is designed to give the Enterprises advice on whether a product or activity is such that the complex NNA will even be required. If the NNA is not required, the advice should be memorialized by a letter.

The consultation will also allow FHFA to inform the GSE of any "other factors" that it believes are appropriate for purposes of determining (a) whether a new activity is "substantially similar" (see section 1253.2) and (b) whether a new product is in the public interest (see section 1253.4(b)(3)(ix)). Waiting until an NNA is submitted for FHFA to inform the GSE of additional information required would be inefficient and time consuming.

- While the proposed rule streamlines the content and simplifies the submission process of the NNA, it appears to do the opposite for submissions for new activity. The proposed rule requires the same information for the NNA submission, at the same level of detail, for a new activity that will be determined to be a new product, subject to a public comment, and for a new activity that is not a new product and may be approved by the FHFA without public comment. The FHFA should review the NNA Form to identify ways to modify the required submissions depending on whether the Enterprise believes, based on the prior consultation with the FHFA (see preceding bullet), that either a new product or a new activity is being submitted for FHFA review and decision. New products will require a significantly greater description and justification than other new activities, in most cases. Anything that can be done to simplify the process for less complex submissions will encourage innovation and allow the Enterprises to respond to changing market conditions much more nimbly.
- The Enterprises are tasked with innovating products and processes to meet their charter duties. This responsibility requires potentially costly research and development as well as partnering with third parties who have spent time and money on development technologies. The review process should take enhanced efforts to protect the intellectual properties of investors or risk undermining investors' incentive to undertake investments in research and development. To this end, the public preview process should include as an extenuating circumstance the need to protect intellectual property. While the FHFA staff would be able to review the NNA and request additional details, they would not be made public until after the product or service is launched or until after the intellectual property rights are secured. This change would strike a balance between innovation and safety and soundness.

Likewise, to the extent that an enterprises' Board of Director presentations, minutes, and decision document illuminate intellectual capital or business trade secrets, the proposed rule should adopt the confidential treatment language under section 1253.5 of the interim rule and under item 17 of the NNA forum as specified in the interim final rule.

Once again, REALTORS® thank the FHFA for their efforts to refine and simplify the new product and services review process which has blossomed under conservatorship and will be vital to serving the market in the future. However, further adjustments may help to reduce the burdens on the Enterprises ability to support greater innovations and protections of intellectual properties. If you have any questions, please contact me or NAR Senior Policy Representative, Ken Fears, at 202-383-1066 or KFears@NAR.REALTOR.

Sincerely,



Charlie Oppler
2021 President, National Association of REALTORS®