

§ 1252.2 Effective duration.

This part shall be in effect for each Enterprise so long as—

(a) This part has not been superseded through amendment, and

(b) The Enterprise remains subject to the terms and obligations of the respective Senior Preferred Stock Purchase Agreement.

PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

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AUTHORITY: 12 U.S.C. 4511; 12 U.S.C. 4513; 12 U.S.C. 4526; 12 U.S.C. 4541.

SOURCE: 88 FR 79229, Dec. 27, 2022, unless otherwise noted.

§ 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:

Activity means a business line, business practice, offering, or service, including a guarantee, a 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.

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, or 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 an Enterprise'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. Operational risk includes reputational risk, which is the potential for substantial negative publicity regarding an Enterprise's business practices.

Pilot means an activity that has a limited term and scope for purposes of evaluating the viability of the activity. A pilot may also be referred to as a testing initiative, test and learn, temporary authorization, or by other names.

§ 1253.3 New activity description and exclusions.

(a) A new activity is any of the following if not engaged in by the Enterprise on or before February 27, 2023:

(1) An activity;

(2) An enhancement, alteration, or modification to an activity that—

(i) Requires a new resource, type of data, policy, modification to an existing policy, process, or infrastructure;

(ii) Expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise; or

(iii) Involves a new category of borrower, investor, counterparty, or collateral;

(3) A pilot or a modification to the volume or duration of a pilot, including a modification to a pilot that commenced before February 27, 2023; or

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(4) An activity that results from a pilot (including from a pilot that commenced before February 27, 2023) or an enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) to an activity that results from a pilot (including from a pilot that commenced before February 27, 2023).

(b) A new activity excludes:

(1) An enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) to the technology, operating system, or software to operate the automated loan underwriting system of an Enterprise that was in existence as of July 30, 2008.

(2) An enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) 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 enhancement, alteration, or modification does not alter the underlying transaction so as to include services or financing, other than residential mortgage financing.

(3) Pursuant to the requirements of § 1253.8, any activity undertaken by an Enterprise that is substantially similar to—

(i) The automated loan underwriting system of an Enterprise that was in existence as of July 30, 2008, including or any enhancement, alteration, or modification to the technology, operating system, or software to operate the automated loan underwriting system;

(ii) Any enhancement, alteration, or modification to mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an Enterprise, provided that such activity does not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; and

(iii) A new product that the Director has approved for either Enterprise under § 1253.6(a) through (f) or § 1253.7 or a new product that is otherwise available to either Enterprise under § 1253.6(h).

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

§ 1253.4 New product determination.

(a) A new product is any new activity that the Director determines merits public notice and comment about whether it is in the public interest.

(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 sections 1332–1335 of the Safety and Soundness Act (12 U.S.C. 4562–4565);

(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 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 Notice of new activity.

(a) Before commencing a new activity, an Enterprise must submit a notice of new activity to FHFA. An Enterprise may request prior consultation with FHFA about whether a notice of new activity is required.

(b) In support of its notice of new activity, the Enterprise shall submit thorough, complete, and specific information as described under § 1253.9(a). FHFA will evaluate the notice of new activity to determine if the submission contains sufficient information to enable the Director to determine whether the new activity is a new product subject to prior approval. 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).

(c) 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.

(d) 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 elect to either submit a request for prior approval of the new product under §1253.6 or discontinue its plan to offer the new product to the market.

(e) If the Director determines that the new activity is not a new product, or if after the 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.

(f) 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 confirm that the activity is consistent with the Enterprise’s authorizing statute.

§ 1253.6 Request for prior approval of a new product; public notice; standards for approval.

(a) An Enterprise must submit a request for prior approval of a new product to FHFA before offering a new product to the market.

(1) An Enterprise may submit a request for prior approval of a new product if the Director determines that a new activity is a new product under §1253.5(d) or, following consultation with FHFA, if the Director authorizes the Enterprise to submit such a request without first submitting a notice of new activity. An Enterprise must submit a request for prior approval of a new product to FHFA before offering a new product to the market.

(2) In support of its request for prior approval of a new product, the Enterprise shall submit thorough, complete, and specific information as described under §1253.9(b).

(3) FHFA will evaluate the request to determine if the submission contains sufficient information for FHFA to prepare a public notice such that the public will be able to provide fully informed comments on the 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(c)(2).

(b) Following FHFA’s determination that a submission is complete, FHFA will publish a public notice soliciting comments on the new product on FHFA’s website and in the FEDERAL REGISTER without delay.

(1) The public notice will describe the new product and will include such information from the request for prior approval of a new product as necessary to provide the public with sufficient notice and opportunity to comment on the new product. The public notice will provide instructions for the submission of public comments.

(2) The public will have 30 days from the date that the public notice is published in the FEDERAL REGISTER to provide comments on the new product.

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

(c) 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.

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(d) 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.

(e) The Director may consider the factors provided in §1253.4(b) when determining whether a new product is in the public interest.

(f) 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.

(g) If the Director disapproves the new product, the Enterprise may not offer the new product.

(h) 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 confirm that the product is consistent with the Enterprise's authorizing statute.

(i) The Director may request any information in addition to that supplied in the completed request for prior approval of a new product if, as a result of public comment or otherwise in the course of considering the request, 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.

(a) The Director may approve a new product without first seeking public comment as described in § 1253.6 if:

(1) In addition to the information required by § 1253.9(b), 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

(2) 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.

(b) 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(d).

(c) 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 in accordance with § 1253.6.

(d) 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 Substantially similar activities.

(a) An Enterprise shall notify FHFA of its intent to commence an activity that is substantially similar to any of the following activities at least 15 days prior to offering the activity:

(1) The automated loan underwriting system of an Enterprise that was in existence as of July 30, 2008, including any enhancement, alteration, or modification to the technology, operating system, or software to operate the automated loan underwriting system;

(2) Any enhancement, alteration, or modification to mortgage terms and

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conditions or underwriting criteria relating to mortgages that are purchased or guaranteed by an Enterprise, provided that such activity does not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; or

(3) A new product that the Director has approved for either Enterprise under § 1253.6(a) through (f) or § 1253.7 or a new product that is otherwise available to either Enterprise under § 1253.6(h).

(b) The Director may determine that an activity is substantially similar to an activity described in paragraph (a)(1) or (2) of this section, if the activity is:

(1) A technology system that applies mortgage terms and conditions or underwriting criteria to residential mortgages that are purchased or guaranteed by an Enterprise; or

(2) An enhancement, alteration, or modification to the technology, operating system, or software to operate a technology system described in paragraph (b)(1) of this section.

(c) The Director may determine that an activity is substantially similar to an activity described in paragraph (a)(3) of this section, if the activity:

(1) Requires the same or a similar resource, type of data, policy, process, and infrastructure;

(2) Entails the same or similar levels of credit risk, market risk, and operational risk to the Enterprise; and

(3) Involves the same or a similar category of borrower, investor, counterparty, and collateral.

(d) The notification is not required to be a notice of new activity. The notification shall include the name and a complete and specific description of the activity, as well as an explanation of why the Enterprise believes the activity qualifies as a substantially similar activity under paragraph (a) of this section.

(e) Public notice and comment is not required in connection with offering substantially similar activities.

(f) If the Director determines an activity is not a substantially similar activity, the Enterprise must submit a notice of new activity under § 1253.5 or a request for prior approval of a new product under § 1253.6 and may not pro-

ceed or continue with the activity except pursuant to the requirements in this part.

§ 1253.9 New activity and new product submission requirements.

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

(1) Provide the name of the new activity and a complete and specific description of the new activity that identifies under which paragraph(s) of § 1253.3(a) the activity is described.

(2) Describe the business rationale, the intended market, the business line, and what products are currently being offered or are proposed to be offered under such business line. Also, include a description of any market research performed relating to the new activity.

(3) State the anticipated commencement date for the new activity. Provide analysis, including assumptions, development expenses, any applicable fees, expectations for the impact of and projections for the quarterly size (for example, in terms of cost, personnel, volume of activity, or risk metrics) of the new activity for at least the first 12 months of deployment, as well as the impact of the new activity on the risk profile of the Enterprise and the key controls for the following risks: credit, market, and operational.

(4) If the new activity is a pilot, include the parameters, 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.

(5) Provide a fair housing and fair lending self-evaluation of the new activity. The self-evaluation should, at a minimum, include data on the predicted impact of the new activity for protected class categories; a summary of reasonable alternatives considered; if disparities are identified, the business justification for the new activity; and the extent to which the activity furthers fair housing and fair lending.

(b) A request for prior approval of a new product must provide the following items of information with appropriate supporting documentation. The corresponding paragraph number should be listed with the relevant information provided:

(1) Provide the information required for a notice of new activity as identified in paragraph (a) of this section.

(2) Describe the business requirements for the new product including technology requirements. Describe the Enterprise business units involved in conducting the 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 product.

(3) Provide a legal analysis as to whether the new product 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).

(4) 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 the new product.

(5) Describe the impact of the new product on the public interest and provide information to address the factors listed in §1253.4(b).

(6) Describe how the new product is consistent with the safety and soundness of the Enterprise or the mortgage finance system.

(7) Explain any accounting treatment proposed for the new product.

(c) FHFA may require an Enterprise to submit such further information as the Director deems necessary to make a determination on a notice of new activity or a request for prior approval of a new product, at the time of the original submission or any time thereafter.

(d) An Enterprise shall certify, through an executive officer, that a notice of new activity or a request for prior approval of a new product and any supporting material submitted to FHFA pursuant to this part contain no material misrepresentations or omissions. FHFA may review and verify any

information filed in connection with a notice of new activity or request for prior approval of a new product.

§ 1253.10 Public disclosure.

In addition to information disclosed in the public notice on a new product, FHFA will make public information related to the Director's determinations on new activity and new product submissions within a reasonable time period after the end of the calendar year during which either Enterprise filed such a submission. Any disclosure under this paragraph will omit any confidential and proprietary information not previously disclosed as part of a public notice on a new product.

§ 1253.11 Preservation of authority.

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:

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

(b) 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.

PART 1254—VALIDATION AND APPROVAL OF CREDIT SCORE MODELS

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