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January 8, 2021

Alfred M. Pollard, General Counsel  
Federal Housing Finance Agency  
400 7th Street SW  
Washington, DC 20219

**RE: Prior Approval for Enterprise Products; RIN 2590-AA17**

Dear Mr. Pollard:

The Independent Community Bankers of America (ICBA) appreciates the opportunity to provide input and comment on the Federal Housing Finance Agency's (FHFA) proposed rule that outlines the process of prior approval for Enterprise products. The proposed rule is intended to replace a 2009 Interim Final Rule which implemented section 1321 of the Federal Housing Enterprises Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended by the 2008 Housing and Economic Recovery Act (HERA), and required the Enterprises to provide notice and obtain approval from the FHFA Director for any new product or activity. Recognizing that the Enterprises play a significant role in mortgage market innovation while ensuring that the Enterprises remain mission-focused, the Safety and Soundness Act and HERA stressed the requirement that the Director review and approve new Enterprise products and activities.

Enterprise innovation has been extremely helpful and critical in moving the mortgage lending industry forward. By embracing new technology and innovation, the Enterprises continue to facilitate lower origination and servicing costs while improving the loan manufacturing process, reducing errors, expanding access to credit, and increasing liquidity. However, as new technologies and processes evolved, industry participants felt the Enterprises' activities occasionally strayed from their secondary market roles and mission requirements into areas already well-served by primary market participants. Further, there continues to be some concern that the Enterprises' innovative pilot programs disproportionately benefit certain large volume entities in exchange for market share while requests for similar pilot programs from smaller production lenders are largely ignored.

Moreover, broad stakeholder feedback regarding several recent Enterprise pilot programs suggests the process lacks adequate transparency and public disclosure. While ICBA supports many of the innovative efforts of the Enterprises, it is crucial that their implementation and development become more inclusive and transparent. We are encouraged that FHFA is replacing the 2009 Interim Final on this issue but urge FHFA to go further.

*The Nation's Voice for Community Banks.®*

WASHINGTON, DC  
1615 L Street NW  
Suite 900  
Washington, DC 20036

SAUK CENTRE, MN  
518 Lincoln Road  
P.O. Box 267  
Sauk Centre, MN 56378

866-843-4222  
www.icba.org

Specifically, ICBA requests that FHFA (1) provide additional clarity regarding what is a product and what is an activity, and (2) provide an annual recap of Enterprise approval submissions including both FHFA's decision/designation regarding those submissions and FHFA's justification for each. This would also include a listing of all pilot programs, their status, and the participants involved. These details should be disclosed in the Enterprises' annual reports and in FHFA's annual report to Congress.

**FHFA should provide additional clarity regarding the definition of a “product” and an “activity.”**

The proposed rule allows the Director considerable discretion to define and differentiate a “product” from an “activity.” This is in accordance with section 1321 of the Safety and Soundness Act: “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, 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.”

Improvements and enhancements to the Enterprises’ automated underwriting systems and underwriting criteria are generally exempt from this approval process – as those are likely to represent a majority of new activities/programs the Enterprises would undertake. The proposed rule, building upon the Safety and Soundness Act and the 2009 interim final rule, leaves broad areas up to the sole interpretation of the Director. This discretion resulted in activities/pilot programs that many in the industry believed were really “products” and therefore should have been subject to the notice and comment process. A recent example was Freddie Mac’s provision of operating lines of credit to certain non-bank servicers secured by mortgage servicing rights. ICBA, along with other industry stakeholders, raised this issue with a previous Director and, without any further clarity or explanation, were told it was solely his decision to label it an “activity” and therefore not subject to public notice and comment.

ICBA recognizes that the Director must have reasonable latitude in interpreting and applying the statutory authorities on these issues. As stated earlier, ICBA believes innovation is one of the many benefits the Enterprises provide the mortgage marketplace and when pursued in a safe and sound manner, and within the scope of their charters, homebuyers and market participants all benefit. As such, we urge the FHFA to provide greater clarity on what meets the definition of a product.

**FHFA should provide an annual recap of Enterprise approval submissions and FHFA’s decisions regarding those submissions.**

Neither the 2009 interim final rule nor this proposal require any tracking and reporting of Enterprise approval submissions or their final disposition. As a result, it will be difficult to measure the effectiveness of this rule or FHFA's compliance with statute. Without this information, concerns remain regarding a lack of transparency to market participants, to Congress, and to the taxpayers. While this disclosure/reporting of Enterprise approval submissions may pose challenges from an Enterprise competition perspective, ICBA urges FHFA to explore providing at least a high-level summary of these activities in its annual report to Congress. ICBA also suggests that the Enterprises disclose all current pilot programs and their participants on an annual basis. Taken together, these actions will help make the process around innovation more transparent.

ICBA appreciates the opportunity to provide comment on this proposed rule and looks forward to working with FHFA as this process continues. If you have any questions regarding the content of this letter, please contact the undersigned at [tim.roy@icba.org](mailto:tim.roy@icba.org).

Sincerely,

/s/

Tim Roy  
Director, Housing Finance Policy