



FHFA PROPOSED RULE FOR NEW ENTERPRISE PRODUCTS AND ACTIVITIES

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BACKGROUND

Section 1123 of the Housing and Economic Recovery Act of 2008 (Section 1123) amended the Federal Housing Enterprises Financial Safety and Soundness Act (Safety and Soundness Act) to require Fannie Mae and Freddie Mac (the Enterprises) to provide notice to the Federal Housing Finance Agency’s (FHFA) Director before undertaking a new activity and obtain prior approval from FHFA before offering a novel product. On July 2, 2009, FHFA published an interim final rule that established a process for the Enterprises to submit a notice of a new activity and for FHFA to determine whether that activity is a new product that merits public notice and comment. The proposed rule, if adopted as final, would replace the interim final rule.

SUMMARY OF THE PROPOSED RULE

The proposed rule retains the key concepts from the interim final rule but restructures the rule to better define what a new activity and/or a new product is and to streamline the notice and review process.

Description of a new activity

The proposed rule would establish criteria for determining what constitutes a new activity that requires prior notice to FHFA. Under the proposed rule, to be considered a new activity, the activity must be:

- 1) A business line, business practice, offering or service 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) Not under current engagement as of the final rule’s effective date or an enhancement, alteration, or modification to an existing activity; and
- 3) Described by one or more of the following criteria:
 - ✓ Requires a new type of resource, data, process, infrastructure, policy, or modification
 - ✓ Expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise;
 - ✓ Involves new categories of borrowers, investors, counterparties, or collateral;
 - ✓ Substantially impacts the mortgage finance system, the Enterprises’ safety and soundness, or compliance with the Enterprises’ charters;
 - ✓ Is a Pilot; and/or
 - ✓ Results from a Pilot.

Comparison of 2009 Interim Final Rule and 2020 Proposed Rule	
Interim Final Rule	Proposed Rule
Trigger date for an activity to be considered new is July 30, 2008.	Trigger date for an activity to be considered new is the effective date of the final rule.
New activity and new product are defined by exclusion.	New activity and new product are defined by inclusion with, as much as possible, objective criteria.
Notice of New Activity content is described in a form with general and supplemental instructions that are attached as an Appendix to the rule.	Notice of New Activity content is described in the rule and does not require use of a specific form.
Establishes requirements for requesting confidentiality.	Follows common practice that public comments will be made public. FHFA will determine what information merits public notice.





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Activities that are excluded from being considered a new activity or a new product

In accordance with the Safety and Soundness Act, the proposed rule would exclude certain activities from the scope of the proposed rule. The excluded activities include:

- Any modification to the Enterprises' automated underwriting system and any upgrades to the technology, operating system, or software to operate the underwriting system;
- Any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an Enterprise;
- Any activity that is substantially similar to the above activities; and
- Any activity that is substantially similar to an approved new product.

The proposed rule would also exclude activities that are performed solely to facilitate the administration of an Enterprise's internal affairs to conduct its business, such as deploying a new human resources system.

New activities that are new products

The proposed rule would describe a new product as any new activity that FHFA determines merits public notice and comment on matters of compliance with the applicable sections of an Enterprise's authorizing statute, safety and soundness, or public interest. The public interest factors that would be considered by FHFA include any activities that:

- Advance any of the purposes of the Enterprise under the applicable authorizing statute;
- Serve underserved markets or further fair housing and/or fair lending;
- Could be supplied by other market participants and/or promotes or stifles competition;
- Overcome natural market barriers or inefficiencies;
- Raise or mitigate systemic risks to the mortgage, mortgage finance, or other financial markets; and
- Involve other factors as determined appropriate by the Director.

Review of Notice of New Activity

Like the interim final rule, the proposed rule would establish the submission process and timing around when a Notice of New Activity (Notice) is considered complete and received. Before a Notice is deemed complete and received, FHFA may request information or review the new activity under any applicable regulation or statute, such as the Uniform Mortgage-Backed Security regulation.

Once the Notice is deemed received, FHFA has 15 calendar days to determine if the new activity is a new product that merits public notice and comment. If FHFA determines that a new activity is not a new product, the Enterprise may proceed with engaging in the new activity. The proposed rule would provide that FHFA has the authority to place conditions on the new activity.

If FHFA determines that a new activity is a new product, the proposed rule would require FHFA to publish a public notice soliciting comments on the new product for a 30-day period. After the comment period has ended, FHFA would have 30 days to approve or not approve the new product. As with a new activity, the proposed rule would provide FHFA with the authority to place conditions on the new product.





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The timelines for FHFA to review and act are statutory. Should no determination be made within those timeframes, the proposed rule would allow an Enterprise to proceed with engaging in the new activity or offering the new product. Nothing in this proposed rule would preclude FHFA from reviewing any activity for safety and soundness at any time.

The proposed rule would also establish the requirements for granting temporary approval of a new activity, which is fundamentally unchanged from the interim final rule.

Substantially Similar Provisions

The proposed rule would establish the requirements under which one Enterprise's approved new product is available for the other Enterprise to offer. This includes both offering the identical new product or offering a substantially similar new product. The proposed rule would also clarify that if an activity has one of the criteria of a new activity, such as involving new collateral, then that activity is not considered substantially similar and an Enterprise must submit a Notice of New Activity.

The proposed rule would allow either Enterprise to engage in a substantially similar activity to a new product approved by FHFA, provided that the Enterprise:

- Notifies FHFA 15 calendar days prior to engaging in the substantially similar activity;
- Provides a complete description of the substantially similar activity (but not a Notice of new activity); and
- Describes why and how the activity is substantially similar.

The proposed rule would also allow an Enterprise to offer the same new product approved for the other Enterprise, provided that the submitting Enterprise:

- Notifies FHFA 15 calendar days prior to engaging in the same new product; and
- Provides a complete description and name of the new product.

Content of the Notice of New Activity

The proposed rule would establish the content that must be in a Notice of New Activity. The scope of the information required in a Notice of New Activity allows FHFA to assess the impact, risks, and benefits of a new activity, and to determine whether the new activity is a new product that merits public notice and comment.

Preservation of Authority

The proposed rule would also establish that FHFA, exercising its authorities under the proposed rule, in no way restricts the safety and soundness authority of the Director over all new and existing products or activities, compliance with the proposed rule if adopted as final, 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.





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Approval Processes for New Activities and New Products Under the Proposed Rule

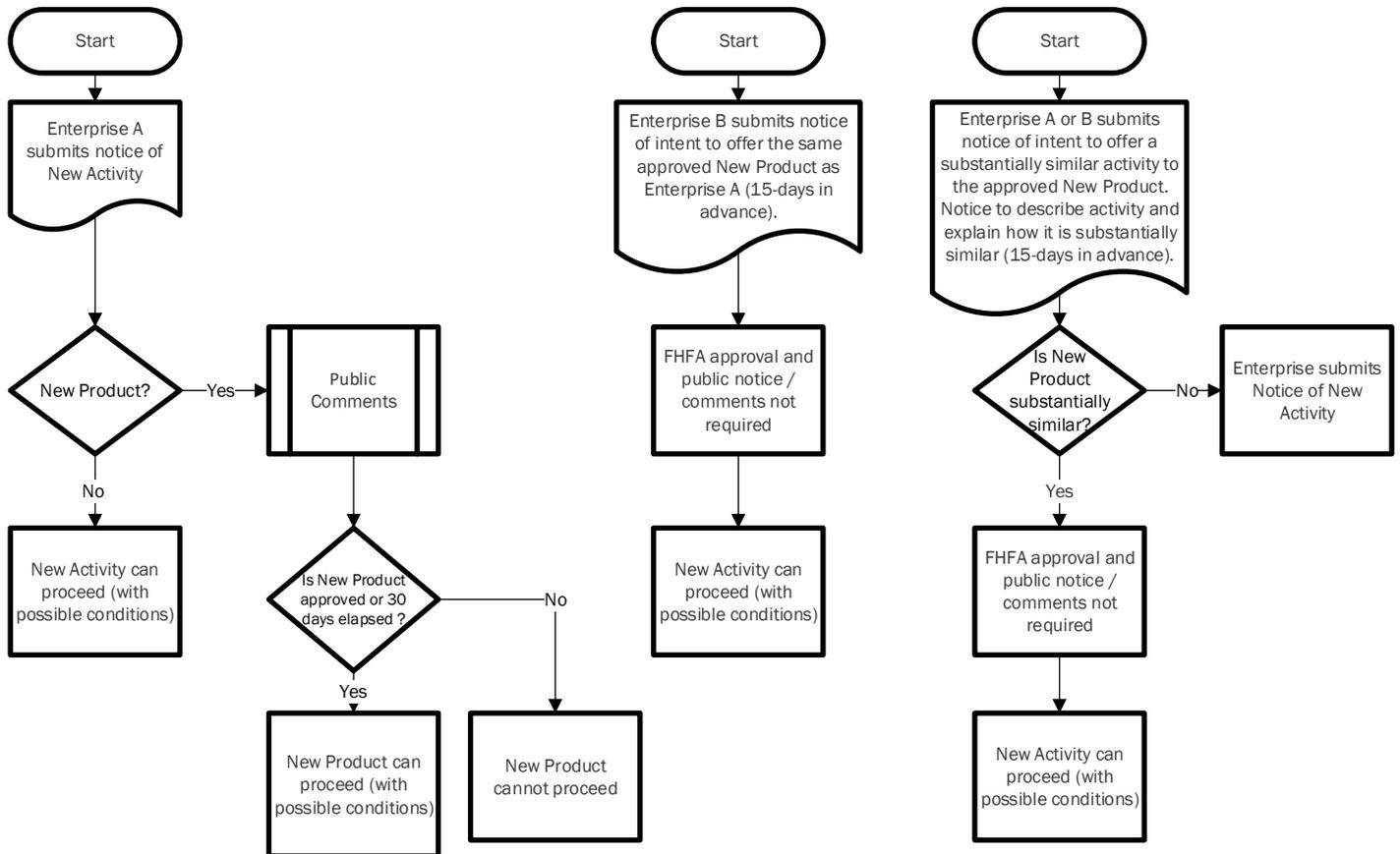


Figure 1: Decision Tree

