



August 27, 2009

Mr. Edward J. DeMarco  
Acting Director  
Federal Housing Finance Agency  
1700 G Street NW  
Washington, DC 20552

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

Dear Acting Director DeMarco:

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to provide comments to the Federal Housing Finance Agency (FHFA) regarding the interim final regulation (Interim Rule) establishing a process for Fannie Mae and Freddie Mac (collectively, the government sponsored enterprises, or GSEs) to obtain prior approval from the FHFA for a new product and provide prior notice to the FHFA of a new activity.<sup>2</sup> The Interim Rule implements 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 (HERA).<sup>3</sup>

MBA's comments address only the Interim Rule as it relates to the GSEs' current statutory, regulatory, and operational framework. MBA is preparing comprehensive recommendations regarding the role of the government and private sector in the secondary mortgage market, including the oversight of products, activities and other obligations. We would like to meet with the FHFA in the near future to discuss these recommendations in more detail.

**MBA Position**

MBA has long supported strong GSE regulatory oversight to ensure they operate in a safe and sound manner, and engage in activities consistent with their charter. We believe effective mission oversight helps to maintain the vitality and robust, competitive

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

<sup>2</sup> 74 Fed. Reg. 126, 31602-31618, (July 2, 2009).

<sup>3</sup> Pub. L. 110-289, 122 Stat. 2654 (July 30, 2008).

nature of the primary market by preventing expansion of GSE activities beyond the intended boundaries of their federal government charters.

MBA also supports the ability of the GSEs to innovate to carry out their charter purposes and make mission-related improvements within their sphere in a timely manner.

MBA believes the Interim Rule espouses rigorous safety and soundness principles without undue constraints on the GSEs' capacities to facilitate advances in the housing finance industry. In particular, MBA supports the Interim Rule's single form to be used for both product approval requests and new activity notices. We note that HERA does not provide definitions for the terms "product" or "activity." Accordingly, MBA concurs with the FHFA that distinguishing between a product and an activity is a decision that should be made by the GSEs' regulator rather than the GSEs themselves.

MBA also supports the Interim Rule's provision that preserves the FHFA's authority to review any product or activity at any time for safety and soundness or mission compliance purposes. We believe effective GSE oversight requires constant supervision throughout the business cycle of a product or activity, not just at the initiation or approval stage.

MBA endorses the Interim Rule's requirement to seek public comment as part of the GSE product approval process. MBA believes transparency is a critical component for making sure the GSEs carry out their secondary market functions and assist, rather than impair, the work of the primary mortgage market. The public comment period also enables the FHFA to gather input from a diverse range of perspectives.

MBA suggests that further transparency would be provided if the FHFA maintained an online archive of its GSE product and activity determinations. This would also enable interested parties to better understand the foundation for the FHFA's determinations. Additionally, we note that this would be consistent with the practice of other federal banking regulators that post supervisory determinations regarding the products, programs and activities of financial institutions they regulate.

MBA requests the FHFA consider clarifying the Interim Rule's procedures for certifying and nullifying an approval.<sup>4</sup> MBA firmly believes measures should be established to ensure the GSEs submit accurate, truthful and complete information. Nevertheless, it is important that enforcement protocols not be so daunting that they discourage innovation. The Interim Rule's reference to the criminal sanctions provided by 18 U.S.C. 1001 could be interpreted to suggest that the GSE officer certifying the accuracy and completeness of an application could be sent to prison for any omission in the application or supporting materials, regardless of the significance of the omission. Although this is unlikely what the FHFA intended, MBA believes the Interim Rule would be improved by establishing gradations of specific supervisory consequences that will be taken depending on the degree of materiality of the misrepresentation or omission.

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<sup>4</sup> 74 Fed. Reg. 126, 31607, (July 2, 2009).

For example, MBA believes the technical accuracy of the Interim Rule would be improved by clarifying that the sanctions provided by 18 U.S.C. 1001 apply to knowing or willful material misrepresentations or omissions.

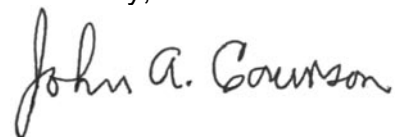
MBA is also concerned that the sheer volume of paperwork required to be submitted will constrain innovation. We recommend that FHFA consider a two-step approach, if requested by a GSE for a specific product or activity, whereby a GSE could provide a thorough outline of a new product or activity and FHFA could make a preliminary determination as to whether the product or activity appears to be within the confines of the Charter and mission. The preliminary determination would assist a GSE in deciding whether to abandon its effort, or to devote additional resources and pursue the submission further. FHFA would retain the right to change its response based upon the full application and/or public comment.

MBA also requests the FHFA consider establishing additional parameters for determining whether a submission is complete and “received.” For example, the Interim Rule imposes no obligation on the FHFA to determine when a submission is “received” in an expeditious manner. We appreciate that prudent supervisory actions require thorough due diligence of the relevant safety and soundness and charter-related issues, but we are also mindful that excessive delays would prevent timely responses to market conditions by the GSEs.

### **Conclusion**

MBA believes giving clear direction to review the GSEs’ activities and establishing standards for such review regarding existing and new programs and activities provide more than mere clarity. It provides a measure of assuring competition now and in the future in both the primary and secondary markets. MBA looks forward to opportunities for working with the FHFA and the GSEs to undertake new products and activities in compliance with the Interim Rule. In the meantime, we request that you consider the modifications suggested above. Any questions about MBA’s comments should be directed to Michael Carrier, Associate Vice President of Secondary and Capital Markets at (202) 557-2870 or mcarrier@mortgagebankers.org.

Sincerely,

A handwritten signature in cursive script that reads "John A. Courson".

John A. Courson  
President and Chief Executive Officer