



NATIONAL ASSOCIATION OF REALTORS®

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Charles McMillan, CIPS, GRI
President

August 28, 2009

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

Transmitted by e-mail to RegComments@FHFA.Gov

RE: RIN 2590-AA17, Prior Approval for Enterprise Products

Dear Mr. DeMarco:

On behalf of the 1.2 million members of the National Association of REALTORS® (NAR), I am submitting NAR's comments on the interim rule of the Federal Housing Finance Agency (FHFA) that establishes procedures for prior approval of new products and activities of Fannie Mae and Freddie Mac (the government sponsored enterprises, or GSEs). 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 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

I am sure that FHFA shares with NAR the goal of permitting the GSEs to offer new products and engage in new activities without facing unnecessary red tape or undue delay. With that in mind, we offer the following comments for your consideration of ways to streamline the process even more than the interim rule. Having a combined Notice of New Activity (NNA) for new products and activities makes sense, but we believe there are ways to expedite FHFA's consideration and, where appropriate, approval of new products and activities.

- The General Instructions for the NNA advise that a GSE may consult with FHFA to seek clarification and information about a potential request. This is a good idea that should be included in the regulation, giving the GSEs 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 GSEs advice 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.

- The NNA submission appears to require the same information, 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. NAR suggests that FHFA review the NNA Form to identify ways to modify the required submissions depending on whether the GSE 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. We think it likely that 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 GSEs to respond to changing market conditions much more nimbly.
- Part D of the instructions for the NNA closely tracks, in several places, regulatory text. This approach unnecessarily requires users to compare the documents to identify any differences and inevitably results in unintended differences, such as those described below.

NAR recommends that Item 1, second paragraph, of Part D of the instructions be amended to cross reference to the factors listed under the definition of “substantially similar” in section 1253.2, Definitions. There is already one difference that may be confusing. Items (10) and (11) from the definition in section 1253.2 have been combined into a single item 10 in the instruction, but the numbering skips number 11 and goes to number 12.

Similarly, NAR recommends that Item 6 of Part D cross reference to the factors in section 1253.4(b)(3) for determining whether a proposed new activity is in the public interest.

- Under Item 6 of the NNA Form itself, the list of factors for FHFA to consider in determining whether a proposed new activity is in the public interest is inconsistent with section 1253.4(b)(3) and Item 6 of the Supplemental Instructions. NAR urges that the NNA Form cross reference to the factors in the regulation to avoid skipping an item (in this case, section 1253.4(b)(3)(v) has been skipped). In addition, Item 6 of the NNA Form does not include the “other factors” item in section 1253.4(b)(3)(ix). As suggested above, these other factors could be identified during consultation discussions between the GSE and the FHFA before submission of the NNA.

- Under Item 17 of the NNA Form, you indicate that you will automatically consider GSE Board of Director presentations, minutes, and decisions document for confidential treatment under section 1253.5. NAR recommend that you include this key, substantive policy in section 1253.5 itself.

NAR also has a technical concern about section 1253.6(b), which states that "any person responsible for any material misrepresentation or omission" in connection with submissions under the rule may be subject to various enforcement remedies, including criminal penalties under 18 U.S.C. 1001. The rule may cause undue concern and confusion since it could be read as attempting to expand the scope of section 1001, which is beyond FHFA's authority. Section 1001 applies only if the violator has acted "knowingly and willfully," but the regulation does not include this standard. In addition, the rule applies to inadvertent omissions. Section 1001 does not use the term omissions. Section 1253.6(b) should be revised to state that submissions under the rule are subject to criminal penalties under 18 U.S.C. 1001 and any other applicable criminal and civil enforcement statutes, in accordance with their terms.

If you would like to discuss our comments and concerns, please have your staff contact Jeff Lischer, NAR's Managing Director for Regulatory Policy, at 202.383.1117 or jlischer@realtors.org.

Sincerely

A handwritten signature in cursive script, appearing to read "Charles McMillan".

Charles McMillan, CIPS, GRI
2009 President, National Association of REALTORS®