2101 Wilson Boulevard, Suite 610
Arlington, VA 22201
(571) 527-2601

January 6, 2021

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 7th Street, SW, 8th Floor
Washington, DC 20219

Attention: Comments/RIN 2590–AA17, Prior Approval for Enterprise Products

Dear Mr. Pollard,

The Community Home Lenders Association (CHLA) submits our comments on FHFA's proposed rule on prior approval for new products offered by Fannie Mae and Freddie Mac (the Enterprises). CHLA is the only trade association exclusively representing small and midsized independent mortgage banks (IMBs), which are non-depository community financial institutions whose sole business is originating and servicing home mortgages.

We commend FHFA for proposing a rule to update the exercise of its statutory obligation to review new activities undertaken by Fannie Mae and Freddie Mac (the Enterprises), determine which new activities are new products requiring FHFA's prior review and approval, and to conduct such a review including a public notice and comment process. As set forth in their Congressional charters, the Enterprises have a public mission to increase liquidity, provide stability and promote affordability in the home mortgage market. In performing this mission, they play a vital role in the secondary mortgage market.

Furthermore, given their size and market power, their business activities can have significant impacts on the primary market, including advantaging certain market participants and disadvantaging others. For these reasons, it is appropriate and necessary that FHFA fully exercise its prior approval authority for new products to ensure the Enterprises remain focused on fulfilling the role for which they were created. The exercise of this authority also is consistent with regulating the Enterprises as public utilities, which CHLA and a growing number of other stakeholders believe is the most appropriate long-term regulatory model. We thus strongly support the intent of the proposed rule.

The need for this updated rule is clear. At times, the Enterprises have engaged in business activities that were not clearly connected to their mission and raised safety and soundness questions. A notable example was Fannie Mae's provision of $1 billion in financing to Invitation Homes, a unit of the investment firm Blackstone Group, in 2017. The financing enabled Invitation Homes to refinance a large portfolio of investor-owned, geographically dispersed single-family rental homes.

This transaction raised a number of important questions, including the policy justification for using federally-backed credit to refinance large investor-owned single-family portfolios, why Fannie Mae's apparent entry into a new line of business did not go through the required public review and approval process, whether Fannie Mae could safely manage the risks of such portfolios, and if the transaction harmed homebuyers and communities by reducing the supply of homes available for purchase. In short, this transaction was a prime example of a new product that should have gone through the public review process — and it would have done so under the proposed rule.

We also strongly support requiring Enterprise pilots and new activities resulting from pilots to be submitted to FHFA for new activity review. The Enterprises certainly should be encouraged to conduct pilots, which can help them find new and innovative ways to fulfill their mission by improving their service to the market and homebuyers. However, there has been a notable lack of transparency in the Enterprises' use of pilots. Some pilots have appeared intended to enable the Enterprises to enter into new lines of business, without the required public notice and comment process. In other cases, the details and even the existence of some pilots has been kept secret.

Additionally, our members and other small and midsized lenders have been excluded from participating in some pilots, which can provide unfair advantages to participants (often large lenders). While recognizing that some measure of confidentiality may be required for the successful operation of certain pilots, we believe FHFA should generally require most pilots and all new activities resulting from pilots to be considered new products offered for public review and comment.

At the same time, we are concerned that FHFA proposes to grant itself extremely broad discretion in determining whether a new activity is a new product that should undergo the review process. We recognize that Congress did not define in statute what constitutes a new activity or a new product at the Enterprises, and FHFA by default possesses discretion in making such determinations. We also recognize that FHFA must consider many factors in its analyses, as reflected in the extensive set of proposed criteria. Nonetheless, the criteria are defined so broadly that FHFA, if it were so inclined, could find justification for requiring virtually every new activity of the Enterprises not explicitly excluded in law (e.g., upgrades to their automated underwriting systems) to go through the public review process. We do not suggest this is FHFA's intent.

But the existence of such extremely broad discretion, and the potential for a future Director to exercise it extensively, could create significant regulatory uncertainty for the Enterprises and their lender customers and other business partners. It also could impose a significant compliance burden on the Enterprises, which could slow their ability to make product enhancements or other innovations that improve service to the market and to homeowners. It also could hinder their ability to meet their housing goals or Duty to Serve obligations, which in many cases require the Enterprises to undertake new activities.

Consider, for example, if an Enterprise wanted to purchase six-year adjustable rate mortgages (ARMs) that, except for the length of the initial fixed-rate period, have terms identical to existing ARMs being sold to the Enterprises. This product would seem to meet the statutory criteria for exclusion from FHFA's new activity review in two respects: it is a change to the terms and conditions of mortgages offered by an Enterprise, and it is an activity substantially similar to an already approved product. Yet FHFA could contend it meets the criteria for new activity review because, under the proposed rule, it is "an enhancement, alteration or modification to an existing activity"[1] and might require "a new… process, infrastructure, policy or modification."[2] FHFA additionally might determine that it meets the standard for

[1] § 1253.3(a)(2) of the proposed rule
[2] § 1253.3(a)(3)

public notice and comment as a new product under public interest factors because an Enterprise six-year ARM "is being or could be supplied by other market participants"[3] and could result in less competition,[4] as well as involve other factors the Director deems appropriate.[5]

To address these types of ambiguities and provide clearer guidance to both the Enterprises and the market, we recommend FHFA narrow and more precisely define its criteria for requiring a new product review. FHFA also should define its criteria to avoid, as much as possible, conflicts with mission and compliance obligations of the Enterprises.

We also recommend that FHFA add an additional criterion for determining whether a new activity is a new product requiring a public notice and comment: whether the activity/product offers pricing and/or terms that provide an advantage to certain lenders, based on their size, business volume with an Enterprise, or other factors.

The new activity/product review process can and should be used to help maintain a level playing field for lenders of all sizes. Under conservatorship, FHFA has commendably prohibited the Enterprises from offering guarantee fee discounts in cash window pricing based on a lender's size or business volume. CHLA advocates extending this prohibition across the board to include other types of favorable pricing that provide a proxy for g-fee discounts for large lenders, including loan level price adjustments, securitization pricing in buy up/buy down grids and volume-based pricing of private mortgage insurance on loans sold to the Enterprises.

Additionally, the Enterprises should be prohibited from providing other favorable terms to large lenders, including automated underwriting waivers (in which one Enterprise buys loans approved by the other's AU system), repurchase policies, and, as noted above, participation in pilot programs from which smaller lenders are excluded. Explicitly adding these types of pricing and terms to the criteria for determining whether a new activity should go through the public new product review process would help create and maintain a level playing field for all lenders.

We commend FHFA for proposing this rule. Please do not hesitate to contact us if you have questions or need additional information.

Sincerely,

COMMUNITY HOME LENDERS ASSOCIATION

[3] § 1253.4(b)(3)

[4] § 1253.4(b)(4)

[5] § 1253.4(b)(8)