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National Association of Federally-Insured Credit Unions

January 7, 2020

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 7th Street SW
Washington, D.C. 20024

RE: Prior Approval for Enterprise Products

Dear Mr. Pollard:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the notice of proposed rulemaking requiring the government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, to obtain prior approval from the Federal Housing Finance Agency (FHFA) regarding new products and activities. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 122 million consumers with personal and small business financial service products. NAFCU and its member credit unions appreciate the opportunity to provide further input on this proposed rule and support the FHFA's efforts to streamline the process for the GSEs to add new activities and products. To continue to encourage a thriving housing market, NAFCU requests that the FHFA, in its review of any new product or activity, consider the potential impacts on access to credit for low- and moderate- income borrowers. Although the rule is largely unambiguous and transparent, NAFCU encourages the FHFA to make certain tweaks to improve efficiency for the GSEs and support technological innovation in the housing market.

General Comments

The *Federal Housing Enterprises Financial Safety and Soundness Act of 1992* (the Safety and Soundness Act) requires the GSEs to obtain approval of products or activities before offering them to the market. Accordingly, the FHFA adopted an Interim Final Rule for Prior Approval for Enterprise Products (Interim Final Rule), that became effective on July 2, 2009 and currently remains in effect, which established an interim approach to implementing the Safety and Soundness Act's provisions pertaining to the prior approval process. The Interim Final Rule provides the requirements for a GSE to obtain prior approval for a new product or activity, by submitting a Notice of New Activity. This proposed rule, if adopted as final, will replace the Interim Final Rule and establish some new requirements.

NAFCU supports a vibrant housing finance market that encourages innovation and competition. However, innovation through new products and activities should not create risks that jeopardize the stability of the housing market, reduce credit union access to the secondary market, and put taxpayers on the hook in the event of an economic downturn. NAFCU appreciates this proposed

rule to replace the Interim Final Rule as a more permanent solution while the FHFA contemplates the next steps in administrative reforms for the GSEs. NAFCU and its member credit unions are opposed to removing the GSEs from conservatorship without strong capital reserves and certain legislative guarantees to ensure equal access and pricing for credit unions.

The FHFA Should Adopt Changes to Streamline the Prior Approval Process While Protecting the Mortgage Market and Access to Credit

New Activity and New Product

Timing is the threshold criterion that identifies an activity as new. More specifically, this includes an activity that the GSEs do not currently engage in as of the effective date of this proposed rule, when final, or an enhancement, alteration, or modification to an existing activity that a GSE currently engages in as of the same date. Objective criteria are used to distinguish a new activity from one that is ongoing and the rule identifies common attributes that may appear in activities that are different from those that are ongoing. The scope of the criteria for identifying a new activity is sufficient for capturing scenarios that would require a GSE to submit a Notice of a New Activity to the FHFA. The criteria used to identify a new activity is unambiguous and transparent and it is inclusive of most scenarios that a GSE could possibly face when adding a new activity or product. A clear, unambiguous definition and scope of “new activity” allows the GSEs to implement new technologies or processes to improve operations immediately if they fall outside of the scope, rather than requiring a review unnecessarily. Further review of new technologies and processes would only create a delay in implementation that establishes an artificial barrier to innovation, which could serve to stifle the continued success of the GSEs.

Exclusions from New Activity and New Product

Activities involving the GSEs’ underwriting systems in existence as of July 30, 2008 are expressly excluded from the Safety and Soundness Act and the Interim Final Rule. This includes any upgrade to the technology, operating system, and software to operate the underwriting system. The exclusion for the automated underwriting systems, as set forth in the Safety and Soundness Act, should be applied directly to the related but independent underwriting systems and to future technology systems. Decisions for the GSEs to purchase loans based on a related but independent underwriting system should not delay the flow of the housing finance market. These systems should not be treated as new activities and, in turn, a Notice of New Activity should not be required to be submitted. The FHFA should expand these exclusions consistent with the Safety and Soundness Act as narrowing the exclusions would make it difficult for the GSEs to add new enterprise products and likely cause them to shy away from doing so.

An activity that is substantially similar to the automated underwriting systems and mortgage terms and activities described above are also excluded from the prior approval requirement. On the other hand, if an activity requires a new type of data or a new policy, the activity is not substantially similar to the automated underwriting systems and mortgage term activities, therefore requiring prior approval. A GSE does not need to obtain approval to implement a product or activity that the other GSE has already received approval for. Nor are the administration of the GSEs’ internal

affairs subject to the prior approval requirement of the proposed rule. These exclusions are appropriate because they are consistent with the Safety and Soundness Act and NAFCU has no recommended changes to this approach.

The FHFA should also consider the effect on the cost of housing for low-income and moderate-income borrowers when the GSEs undertake new activities and products. In looking at whether a new product is in the public interest, the FHFA should include other factors like the degree to which the new product allows or disallows low- and moderate-income consumers to obtain mortgage loans. Any new activities or products that disadvantage low- and moderate-income consumers should be more closely scrutinized before approval.

Notice and Approval Processes

Once a GSE submits a Notice of New Activity to the Director, the Director will determine whether the submission contains sufficient information to determine whether the new activity is subject to prior approval. If the determination is in the affirmative, the FHFA will notify the GSE that the submission has been received and, no later than 15 days after this notification, the Director will decide if the new activity constitutes a new product. If it does, the FHFA will publish a public notice soliciting comments on the new product for 30 days. A written determination will be provided to the GSE no later than 30-days after the end of the public comment period. However, in certain circumstances, if a comment period would be contrary to the public interest, the rule provides that the Director may temporarily approve a product and allow for a public comment period after the temporary approval.

NAFCU supports the scope of the exclusion that either GSE may offer a new product or activity that the Director has already approved for the other GSE because the Safety and Soundness Act only requires a new activity to go through the approval process once, regardless of which GSE is offering it. The requirements of a Notice of New Activity are clearly stated and sufficient for evaluating a new activity. Furthermore, the 30-day comment period is reasonable as it gives ample time for the public to express any issues with or approval of the new product. Throughout the approval process, the public interest should be of primary concern to the FHFA, therefore, NAFCU supports the temporary approval exception to the typical 30-day comment period. In such instances, NAFCU urges the FHFA to provide public notice of the temporary approval as soon as practicable and immediately seek comment.

NAFCU supports incorporating the content of the Notice of New Activity into the regulation and removing it from the Appendix, but the FHFA should retain a PDF form for the Notice of New Activity like the form included in the Appendix to the Interim Final Rule. A PDF form would provide a second, easy-to-read reference and also minimize errors and potential missed information as the GSEs engage in the notice and approval process.

Conclusion

NAFCU appreciates the opportunity to comment on the proposed rule for prior approval of GSE products and supports the FHFA in replacing the 2009 Interim Final Rule with this proposal.

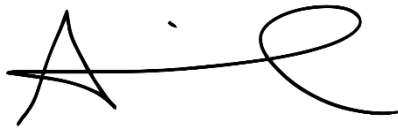
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However, the FHFA should (1) apply the exclusion for the automated underwriting systems as set forth in the Safety and Soundness Act directly to the related but independent underwriting systems and to future technology systems; (2) consider the effect on cost of housing for low-income and moderate-income borrowers when the GSEs undertake new activities and products; and (3) include other factors like the degree to which the new product allows or disallows low- and moderate-income consumers to obtain mortgage loans when looking at whether a new product is in the public interest and prior to approval of a new product or activity. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2268 or amoore@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Moore', with a stylized flourish at the end.

Aminah M. Moore
Regulatory Affairs Counsel