

January 7, 2021

The Honorable Mark Calabria
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

Dear Director Calabria,

Re: Notice of Proposed Rulemaking and Request for Comments – RIN 2590-AA17

The American Bankers Association (ABA)¹ appreciates this opportunity to comment on the Federal Housing Finance Agency's (FHFA or Agency) notice of proposed rulemaking on approval of Enterprise products. If finalized, the new rules would replace a 2009 Interim Final Rule, would take effect immediately, and would remain in place even after conservatorship of the GSEs ends.

ABA welcomes the FHFA's effort to bring greater transparency and objectivity to the approval process for new products offered by the GSEs. Ensuring that the GSEs' activities remain focused on the secondary market and do not stray into competition with primary market participants is a key responsibility of the FHFA. This proposal improves upon the existing rule in providing a more objective and clear construct for the evaluation and approval – or disapproval – of new activities and products. Nevertheless, we believe that the rule can be improved in a number of ways to further reduce subjectivity and ensure appropriate input from the public and impacted industry participants. We also recommend that FHFA make revisions and seek further comment before finalizing the rule.

Discussion

The proposed rule would replace the construct set forth in the 2009 Interim Final Rule that allowed Fannie Mae and Freddie Mac (GSEs or Enterprises) to launch new products as pilots even if the pilot had significant market impact. The proposed new framework:

- Creates a unified advance-notice process that requires the GSEs to inform FHFA of any new activity. "Newness" is defined more objectively and expansively than under the existing rule and would include not only novel activities but also refinements to existing

¹ The American Bankers Association is the voice of the nation's \$20.3 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$15.8 trillion in deposits and extend nearly \$11 trillion in loans.

activities, activities involving increased risk to the GSEs or increased outreach to borrowers, investors, and counterparties, as well as activities requiring the creation of a new division or the dedication of significant resources.

- Also defines as a new activity any undertaking that substantially affects the mortgage system, the GSEs' safety and soundness, compliance ability, or the public interest.
- Imposes new constraints on pilot projects.
- Narrows exclusions applied to operational underwriting activities such as any technology undertaking not directly associated with automated underwriting systems.

The definition of "newness" is key to the proposal. The proposed rule broadens the definition of newness, and seeks to make it more objective and expansive, covering not only novel activities, but also refinements to those under way at either GSE or those that the GSEs may carry out with other parties. Newness also is triggered by an increase in GSE risk, outreach to new borrowers, investors, or counterparties, or by opening up new sources of collateral. Newness also can be triggered by the GSEs opening a new division or otherwise dedicating significant resources. Finally, newness is triggered if an activity substantially affects the mortgage system, the GSE's soundness, GSE compliance, or the public interest.

Despite FHFA's assertions that the proposal would impose more objective standards in determining the GSEs' ability to offer new products, significant subjectivity remains. Much will still depend upon who heads FHFA and how he or she sees the GSEs impacting the public interest, taking on risks, or engaging in outreach to borrowers, investors and others. For example, a future FHFA director may take a very different view of what is in the "public interest" in evaluating a new product offering. It is not hard to imagine a future director taking the view that the GSEs should "lead the market" in the development of new products or innovations that further affordable housing or other outcomes that can be viewed as broadly in the public interest. Alternatively, a future director who is skeptical of government involvement in the secondary market at all, might view even minor updates to technical systems or outreach to investors as "significant" and prevent the GSEs from further engagement in such upgrades in an effort to constrain them or limit their effective participation in the marketplace. To prevent such potential "pendulum swings" in regulation, FHFA should establish detailed standards around the triggers delineated in the proposal.

We recommend that FHFA consider the following approaches to establish more detailed, transparent, and objective standards. When evaluating the safety and soundness risk posed by a new activity, FHFA should establish numerical thresholds. Any activity that could impact the profits or losses of the GSEs beyond a certain percentage would be considered "significant," and thus subject to prior approval. Criteria for determining whether a product or activity is in the "public interest" might include: does the product or activity further a need not being met by the private market? If so, would the GSEs engagement in the activity or product deter or

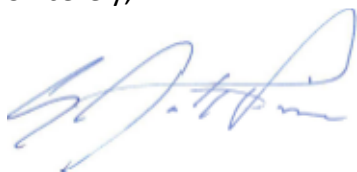
crowd out the private market from offering the product or activity? Establishing a list of questions to evaluate the product or activity would provide a baseline that would ensure more consistent and objective evaluation of the public interest regardless of who is director of the FHFA.

Before finalizing, we strongly encourage FHFA to propose more detailed criteria about how new activities/products will be evaluated, and allow further public comment on them. While this will slightly delay the implementation of a new rule, the additional time will be well worth it if the final rule includes more detailed, transparent, and objective criteria for evaluating new products and activities. Doing so will ensure that regulation and evaluation of the GSEs' products are not subject to changing political views of the GSEs or their role in the secondary market.

Conclusion

The proposed rule is a welcome effort to provide greater transparency and objectivity to the evaluation of new products developed by the GSEs. FHFA should add more detailed criteria to evaluate the GSEs products or activities, and allow for public comment on the further criteria before finalizing. We appreciate this work done by FHFA to improve the product and activity approval process. Further delineation and refinement will ensure that FHFA meets its goal of making the process objective and transparent, regardless of changes in leadership at the FHFA. If you have questions or wish to discuss these comments in more detail, please contact the undersigned at JPigg@aba.com or on 202-663-5480.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Pigg", is positioned above the typed name.

Joseph Pigg
SVP, Fair and Responsible Banking and Mortgage Finance
American Bankers Association