



# FHFA FACTSHEET ON THE NEW ENTERPRISE PRODUCTS AND ACTIVITIES FINAL RULE

## FINAL RULE FOR PRIOR APPROVAL OF ENTERPRISE PRODUCTS

### BACKGROUND

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 (Safety and Soundness Act), requires Fannie Mae and Freddie Mac (the Enterprises) to provide advance notice to the Federal Housing Finance Agency (FHFA) before undertaking a new activity and to obtain prior approval from FHFA before offering a new product to the market, and requires FHFA to adopt an implementing regulation on certain points.

The Safety and Soundness Act excludes certain activities from the review and approval requirements under the Act, including: (1) the Enterprises' automated loan underwriting systems as in existence on July 30, 2008 (AUS), and any upgrades to the technology, operating systems, or software to operate the underwriting systems; (2) any modifications to mortgage terms and conditions or underwriting criteria relating to residential mortgages that are purchased or guaranteed by an Enterprise; and (3) activities that are substantially similar to the activities in (1) and (2) and to new products that have been approved by FHFA. The Safety and Soundness Act prescribes timeframes for FHFA to complete its review and to provide the public with notice and an opportunity to comment on a proposed new product.

FHFA is publishing a final rule to implement section 1321 of the Safety and Soundness Act. FHFA issued a notice of proposed rulemaking on November 9, 2020. The comment period was open for 60 days, during which FHFA received 17 comments on the proposed rule. Public input has provided FHFA with useful information to help refine the rule. As a result, the final rule includes targeted enhancements from the proposed rule.

FHFA sent the final rule to the Federal Register on December 20, 2022 for publication. The final rule will be effective 60 days from the date it is published in the Federal Register. On its effective date, the final rule will replace an interim final rule that has been in place since July 2, 2009.

## SUMMARY OF THE FINAL RULE

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The final rule retains the key concepts from the proposed rule and:

- clarifies the scope of a new activity and a new product;
- enhances the review of pilots;
- clarifies which activities are excluded from the review and approval requirements and expands the criteria for excluded substantially similar activities;
- distinguishes the information requirements for new product and new activity submissions and reduces the amount of information required for a Notice of New Activity; and
- clarifies and improves other procedural elements of the rule such as by making explicit that an Enterprise may consult with FHFA prior to submitting a Notice of New Activity.

The final rule also establishes a public disclosure requirement for FHFA to report on its determinations on new activity and new product submissions.



*Description of a New Activity*

The final rule establishes criteria for determining what constitutes a new activity that requires prior notice to FHFHA. Under the final rule, any of the following is considered a new activity if not engaged in by the Enterprise on or before the effective date of the final rule:

- 1) An activity (meaning—a business line, business practice, offering or service that the Enterprise provides to the market either on a standalone basis or as part of a business line, business practice, offering or service);
- 2) An enhancement, alteration, or modification to an activity that is described by one or more of the following criteria:
  - ✓ Requires a new resource, type of data, process, infrastructure, policy, or modification to an existing policy;
  - ✓ Expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise; or
  - ✓ Involves a new category of borrower, investor, counterparty, or collateral;
- 3) A pilot or modification to the duration or volume of a pilot;
- 4) An activity that results from a pilot.

*Activities That Are Excluded From Being Considered a New Activity or a New Product*

In accordance with the Safety and Soundness Act, certain activities are not considered to be a new activity or a new product. The excluded activities include:

- Any enhancement, alteration or modification to the AUS, including any upgrades to the technology, operating system, or software to operate the AUS;
- Any enhancement, alteration or modification to the mortgage terms and conditions or underwriting criteria relating to residential mortgages that are purchased or guaranteed by an Enterprise;
- Any activity that is substantially similar to the above activities; and
- Any activity that is substantially similar to an approved new product (see below).

The final rule also excludes activities that are performed solely to facilitate the administration of an Enterprise’s internal affairs to conduct its business, such as deploying a new human resources system or making efficiency improvements related to analyzing, processing, and documenting internal information.

Key Changes from Proposed Rule	
Proposed Rule	Final Rule
Has comprehensive content requirements for a Notice of New Activity.	Abbreviates content requirements for a Notice of New Activity and retains comprehensive content requirements for a Request for Prior Approval of a New Product.
A pilot is a potential new activity.	Modifications to the duration or volume of a pilot are also potential new activities.
Describes what are <i>not</i> substantially similar activities for purposes of the statutory exclusion.	Clarifies what <i>are</i> substantially similar activities and broadens the exclusion to include Enterprise technology systems that apply mortgage terms and conditions or underwriting criteria.
Has no public disclosure requirement.	Requires FHFHA to report on determinations made on new activity and new product submissions.





### *Exclusion for Substantially Similar Activities*

Consistent with the Safety and Soundness Act, the final rule establishes criteria for determining whether an activity qualifies for the substantially similar activity exclusion. Under these criteria, a technology system that applies mortgage terms and conditions or underwriting criteria to residential mortgages purchased or guaranteed by an Enterprise is substantially similar to changes to the AUS, mortgage terms and conditions or underwriting criteria. In addition, an activity that requires the same or similar resource, type of data, policy, process, and infrastructure as an approved new product is substantially similar to the approved new product.

The final rule allows an Enterprise to engage in substantially similar activities provided that the Enterprise:

- Notifies FHFA 15 calendar days prior to engaging in the substantially similar activity;
- Provides a complete description of the substantially similar activity; and
- Describes why the activity qualifies for the substantially similar activities exclusion.

The notice requirement for substantially similar activities is less comprehensive than a Notice of New Activity, as it is designed to serve as a means for FHFA to verify that the exclusion criteria have been satisfied.

### *New Activities That Are New Products*

The final rule describes a new product as any new activity that FHFA determines merits public notice and comment about whether it is in the public interest. The public interest factors that would be considered by FHFA include the degree to which the new product:

- Advances any of the purposes of the Enterprise under the applicable authorizing statute;
- Serves underserved markets and Enterprise housing goals;
- Could be supplied by other market participants and/or promotes or stifles competition;
- Overcomes natural market barriers or inefficiencies;
- Raises or mitigates risks to the mortgage finance or financial system;
- Furthers fair housing and fair lending; and
- Involves other factors as determined appropriate by FHFA for consideration of the public interest.

### *Submission Process*

The final rule establishes the submission process, including timing around when a Notice of New Activity is considered complete and received. Before a Notice of New Activity is deemed complete and received, FHFA may request information or review the new activity under any applicable regulation or statute, such as the Uniform Mortgage-Backed Security regulation.





Once the Notice of New Activity is deemed received, FHFA has 15 calendar days to determine if the new activity is a new product that merits public notice and comment. If FHFA determines that a new activity is not a new product, the Enterprise may proceed with engaging in the new activity. The final rule provides that FHFA has the authority to place conditions on the new activity under the Agency's other statutory authorities.

If FHFA determines that a new activity is a new product, the final rule requires FHFA to publish a public notice soliciting comments on the new product for a 30-day period. After the comment period has ended, FHFA has 30 calendar days to approve or not approve the new product. Similar to the treatment of a new activity, the final rule provides FHFA with the authority to place conditions on the new product.

The timelines for FHFA to review and act are statutory. Should no determination be made within those timeframes, the final rule allows an Enterprise to proceed with a new activity or a new product. However, nothing in the final rule precludes FHFA from reviewing any activity for safety and soundness at any time.

The final rule also establishes the requirements for granting temporary approval of a new product.

### *Content of the Notice of New Activity*

The final rule distinguishes the requirements for the content that must be included with a Notice of New Activity from the content that must be included with a Request for Prior Approval of a New Product. The abbreviated scope of information required in a Notice of New Activity allows FHFA to assess the impact, risks, and benefits of a new activity, without compromising its ability to determine whether the new activity is a new product that merits public notice and comment.

Should FHFA determine that a new activity is a new product, and the Enterprise wishes to pursue approval for the new product, the Enterprise must provide the additional information required in a Request for Prior Approval of a New Product so that FHFA can publish a public notice that has sufficient information for the public to comment on the new product.

### *Preservation of Authority*

The final rule establishes that FHFA, exercising its authorities under the final rule, in no way restricts the Agency's safety and soundness authority over all new and existing products or activities, or the Agency's authority to review all new and existing products or activities to determine that such products or activities are consistent with the authorizing statute of an Enterprise.





## NEW ACTIVITY AND NEW PRODUCT SUBMISSION PROCESS

