

## Federal Housing Finance Agency.

## § 1253.3

(c) Offered or engaged in by the Enterprise after July 30, 2008, at a significantly different level, or in a significantly different manner, in terms of the activity's effect on public interest or risk to the Enterprise or the mortgage finance or financial system.

The term "new activity" does not include—

(1) Any Enterprise business practice, transactions, or conduct performed solely as an incident to the administration of the Enterprise's internal affairs to conduct its business; or

(2) Any business practice or service undertaken by an Enterprise that is *de minimis* in scope, volume, risk, or duration.

*New product* means any activity that the Director determines merits public notice and comment on matters of compliance with the applicable authorizing statute, safety and soundness, or public interest. "New product" does not include—

(a) The automated loan underwriting system of an Enterprise in existence as of July 30, 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system;

(b) Any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by the Enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing;

(c) Any activity that is substantially similar to the activities described in paragraphs (a) or (b) of this section;

(d) Any activity that is substantially similar to an activity or product that has been approved in accordance with this part for either Enterprise; or

(e) Any activity that is substantially similar to an activity or product continuously undertaken by the other Enterprise since prior to July 30, 2008.

*Substantially similar.* In considering whether an activity is "substantially similar" to any activity described in section 1321(e)(1)(A) and (B) of the Safety and Soundness Act, 12 U.S.C. 4541(e)(1)(A) and in paragraphs (a) or (b) of this section under the definition of new product, or to any activity ap-

proved in accordance with this part, or continuously engaged in by the other Enterprise as referenced in paragraphs (d) and (e) of this section under the definition of new product, the Director may consider if the activity in question—

(1) Is a product;

(2) Is authorized under the applicable authorizing statute;

(3) Represents an upgrade to the way an approved product is delivered;

(4) Poses a significant change in risk to the Enterprise or the mortgage finance system from a previously approved product or activity;

(5) Involves a significant change in terms, conditions, or limitations expressly contained in any prior approval granted under this part;

(6) Poses a significant change in its effect on the public interest compared to a previously approved product or activity;

(7) Poses a significant change from a previously approved product or activity and if so, does a tradeoff exist in the composite of risk, public interest, and safety and soundness elements in the proposed new activity;

(8) Is likely to have significantly more enterprise resources dedicated to it;

(9) Requires approval by regulators other than FHFA, including Federal, State, or local regulators;

(10) Involves new classes or types of borrowers, investors, or counterparties;

(11) Involves new classes or types of collateral; or

(12) Such other factor as the Director determines to be appropriate.

### § 1253.3 Notice of new activity.

(a) Before commencing a new activity, an Enterprise must submit a Notice of New Activity (Notice) to the FHFA, and either receive a determination that the new activity is not a new product, await passage of the 15 business-day period as described in paragraph (d) of this section, or, where FHFA determines the new activity to be a new product, await approval of the new product under § 1253.4. In addition, for any new activity that an Enterprise seeks to engage in which FHFA had previously approved in accordance with this part for the other Enterprise, or in

## § 1253.4

which the other Enterprise had engaged continuously since prior to July 30, 2008, the Enterprise must submit a Notice to FHFA. In support of its Notice, the Enterprise shall submit information sufficient to allow the Director to make a determination on the Notice pursuant to section 1321 of the Safety and Soundness Act (12 U.S.C. 4541), as amended, including any information required by FHFA by regulation or otherwise. The Enterprise shall provide a thorough, meaningful, complete and specific description of the new activity such that the public will be able to provide fully informed comment on the new activity if FHFA determines the new activity to be a new product. Such information shall include that contained in the FHFA Notice Form and the Instructions for the FHFA Notice of New Activity Form (Notice Form Instructions) that appear in the appendix of this part. The Notice Form and Notice Form Instructions may be amended from time to time by written direction of the Director. Requests for confidential treatment for any portion of an Enterprise's submission must be made consistent with § 1253.5.

(b) FHFA will evaluate a Notice to establish whether the submission contains sufficient information for FHFA to make a determination whether the new activity is a new product subject to prior approval. Upon establishing that the Notice contains sufficient information, FHFA shall deem the submission complete and "received" for purposes of section 1321(e)(2)(B) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)(B)), and shall notify the Enterprise accordingly.

(c) No later than 15 business-days after the Notice is deemed completed and "received" for purposes of section 1321(e)(2)(B) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)(B)), the Director will make a written determination on the Notice, and shall notify the Enterprise accordingly. The Director may also approve the new activity subject to such terms, conditions, or limitations on the Enterprise's engagement in the new activity as the Director determines to be appropriate.

(d) If the Director fails to make a determination within the 15 business-day

## 12 CFR Ch. XII (1–1–11 Edition)

period specified in paragraph (c) of this section, the Enterprise may commence the new activity. The Director's failure to make a determination within the 15-day period does not limit or restrict the Director's safety and soundness authority or the authority of the Director to review the new activity to determine whether the activity is consistent with the statutory mission of the Enterprise.

### § 1253.4 New product approval.

(a) *Public notice.* If the Director determines that the new activity is a new product, FHFA shall publish a public notice soliciting comments on the proposed product for a 30 calendar-day period.

(1) The public notice will describe the new product and state the closing date of the public comment period. The public notice will provide instructions for submission of public comment.

(2) The Director will consider all public comments received by the closing date of the comment period.

(3) In computing the 30 calendar-day public comment period, FHFA excludes the day on which the public notice is published in the FEDERAL REGISTER, from which the period begins to run, and includes the last day of the period, regardless of whether it is a Saturday, Sunday, or legal holiday.

(b) *Director's determination.* (1) No later than 30 calendar-days after the end of the public comment period, the Director will provide the Enterprise with a written determination on whether it may proceed with the new product. The written determination will specify the grounds for the Director's determination.

(2) The Director will approve the new product if the Director determines that the new product complies with the applicable authorizing statute, is in the public interest, and is consistent with the safety and soundness of the Enterprise and the mortgage finance and financial system. The Enterprise may then offer the new product subject to any terms, conditions, or limitations as may be established by the Director.

(3) Among the factors that the Director may consider when determining whether a new product is in the public interest are—