FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1253

RIN 2590–AA17

Prior Approval for Enterprise Products

AGENCY: Federal Housing Finance Agency.

ACTION: Interim final rule; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency) is promulgating and seeking comment on an interim final regulation to implement 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. The regulation establishes a process for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) to obtain prior approval from the FHFA Director for a new product and provide prior notice to the Director of a new activity. Specifically, the interim final regulation implements section 1321 and is designed to ensure that the FHFA Director has the opportunity to determine prior to an Enterprise commencing a new activity whether the new activity is a new product, and if it is a new product, to determine whether the new product is authorized by the Enterprise's charter, is in the public interest, and is consistent with the safety and soundness of the Enterprise or the mortgage finance or financial system. FHFA invites public comment on all aspects of the regulation.

DATES: *Effective Date:* July 2, 2009.

Comment Date: FHFA will accept written comments on the interim final regulation on or before August 31, 2009.

ADDRESSES: Submit comments to FHFA using any one of the following methods:

- *E-mail: regcomments@fhfa.gov.* Please include ''Public Comment—RIN 2590–AA17 (Prior Approval for Enterprise Products)'' in the subject line of the message.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, Attention: Public Comment—RIN 2590–AA17 (Prior Approval for Enterprise Products). The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *Federal eRulemaking: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *regcomments@fhfa.gov* to ensure timely receipt by the Agency. Include the following information in the subject line of your submission: ''Public Comment—RIN 2590–AA17 (Prior Approval for Enterprise Products)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Connelly, 202–414–8910 (not a toll-free number), e-mail: *carol.connelly@fhfa.gov,* Office of Supervision—Office of Supervision Infrastructure; or Ming-Yuen Meyer-Fong, 202–414–3798 (not a toll-free number), e-mail: *ming-yuen.meyer-fong@fhfa.gov,* Office of General Counsel, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments and Access

This interim final regulation as well as any comments posted may be accessed via the Internet. Users can access the FHFA Web page at *http://www.fhfa.gov;* select Supervision and Regulations Tab; select Regulations, Notices and Public Comments; then, select the link titled ''Prior Approval for Enterprise Products.'' In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

II. Background

A. Establishment of the Federal Housing Finance Agency

On July 30, 2008, the President signed the Housing and Economic Recovery Act (Pub. L. 110–289, 122 Stat. 2654) (HERA). Among other things, HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish a new independent agency of the Federal Government known as the Federal Housing Finance Agency (FHFA) and transferred the supervisory and oversight responsibilities for Fannie Mae and Freddie Mac (the Enterprises) from the Office of Federal Housing Enterprise Oversight (OFHEO) and components of the Department of Housing and Urban Development to FHFA. The Enterprises are government-sponsored enterprises chartered by Congress for the purposes of establishing secondary market facilities for residential mortgages. 12 U.S.C. 1716 *et seq.* (Fannie Mae Charter Act) and 12 U.S.C. 1451 *et seq.* (Freddie Mac Corporation Act) (the authorizing statutes).

Congress established FHFA, among other things, to oversee the prudential operations of the Enterprises, and to ensure that: (1) The Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls; (2) The activities of the Enterprises foster liquid, efficient, competitive, and resilient national housing finance markets; (3) The Enterprises comply with the Safety and Soundness Act and the rules, regulations, guidelines, and orders issued under the Safety and Soundness Act and the authorizing statutes; and (4) The Enterprises carry out their public missions through activities and operations that are authorized by and consistent with the Safety and Soundness Act, their respective authorizing statutes, and the public interest. *See* section 1313(a)(1)(B) of the Safety and Soundness Act, as amended (12 U.S.C. 4513(a)(1)(B)).

B. Prior Approval Authority for Products and Activities

Through products offered to the marketplace and their activities in the housing finance system, Freddie Mac and Fannie Mae, together, own or guarantee nearly $5.4 trillion of residential mortgages in the United States. Their products play a key role in housing finance and the U.S. economy. However, the Enterprises also take on risks, and create risks for themselves and the mortgage finance and financial system, through their activities and product offerings. The configuration of particular products may also raise questions of how successfully such products achieve the Enterprises' public missions while balancing the risks borne or created through such products. Because of the significant effects Enterprise products and activities have and could have on the market and market participants, the Safety and Soundness Act empowered the FHFA Director to review products prior to being offered. Specifically, the Safety and Soundness Act requires ''each Enterprise to obtain the approval of the Director for any product of the enterprise before initially offering the product.'' *See* section 1321(a) of the

Safety and Soundness Act (12 U.S.C. 4541(a)).

Before commencing a new activity that an Enterprise does not consider to be a new product, the Safety and Soundness Act requires an Enterprise to provide ''written notice'' to the Director for a determination of whether such a new activity is a new product subject to prior approval under section 1321. *See* section 1321(e)(2) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)). If the Director determines such a new activity to be a new product, the Enterprise shall ''obtain the approval of the Director for any product of the enterprise before initially offering the product.'' *See id.* at section 1321(a) of the Safety and Soundness Act (12 U.S.C. 4541(a)).

III. Analysis of the Interim Final Rule

A. Synopsis of the Interim Final Rule

The structure of the statute superficially suggests that an Enterprise has a choice of two types of submission to make to FHFA: First, a request for prior approval of a new product; and second, a notice of a new activity that the Enterprise does not believe to be a new product. However, the statute does not define either ''product'' or ''activity,'' nor does it direct the agency to define those terms. The standards for determining when an activity must be published for public notice and comment—thereby constituting a new product—include considerations of charter compliance, safety and soundness, and the public interest. These factors are of a high-level character, implicating many considerations in each case that may be difficult to define or identify in advance. FHFA concludes that the determination whether a new activity is a new product in specific instances is committed to agency discretion by law.

The agency does not believe that it is practical to require an Enterprise to identify a new product—as distinct from a new activity that is not a product—in advance for purposes of determining which type of submission to make to the agency. For that reason, the regulation meets the statutory mandate through employing a streamlined ''notice'' process. It requires an Enterprise to make a single form of submission—a notice of new activity. The Director will then decide whether the new activity is a new product that must be published for public notice and comment. In exigent circumstances, the Director may decide to allow an Enterprise to undertake a new product before the public notice and comment period.

To avoid duplication of review, a product undertaken by an Enterprise which is substantially similar to a product previously approved under this part for either Enterprise is not a new product. The definition of new product also does not include a product that is substantially similar to a product that has been continuously undertaken by either Enterprise since prior to the effective date of HERA of July 30, 2008. However, in either case, an Enterprise seeking to undertake such a product for the first time must provide notice to FHFA of the product as a new activity and obtain the Director's approval. FHFA reserves its authority to review such a new activity to ensure compliance with the Enterprise's authorizing statute, safety and soundness considerations, and the public interest, and to deny or to impose any terms, conditions, or limitations on the Enterprise's ability to undertake such a new activity. We note that 12 CFR part 1750, Subpart B, App. A (Risk-based capital) provides for a definition for new activity which applies to the relevant section of that appendix, and is not controlling for purposes of 12 CFR part 1253.

The Director's exercise of his authority under the regulations in this part in no way restricts his safety and soundness authority over all new and existing products or activities of an Enterprise, or his authority to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an Enterprise.

B. Section-by-Section Analysis

Section 1253.1 sets forth the purpose and authority of this part.

Section 1253.2 sets forth definitions of terms used in this part which are discussed further below in the context that they are used.

Section 1253.3 establishes that before commencing any new activity, an Enterprise must submit to FHFA a written Notice. As part of its submission, an Enterprise must complete the FHFA Notice of New Activity Form (Notice Form) and submit it to FHFA in the manner described in the Instructions for the Notice Form established through the appendix to this part, and which may be modified from time to time by written direction of the Director. The Notice Form provides a mechanism for the Director to determine whether the new activity is a new product in accordance with 12 U.S.C. 4541 and 12 CFR part 1253. The Notice Form also serves, where the Director determines the activity is not a new product, to provide information to FHFA necessary in exercising its authorities as safety and soundness regulator. A Notice will not be considered complete and received for processing until all of the information required by the Notice Form, along with any follow-up information required by FHFA upon review of the initially submitted information to enable a determination whether the new activity is a new product, has been submitted. FHFA will notify the Enterprise once a Notice Form is deemed complete and accepted for review.

An Enterprise may not commence a new activity unless the Director makes a written determination that the new activity is not a new product, or at least 15 business-days have elapsed since the Enterprise was notified that a Notice was complete and received for processing without the Director having made a determination. If the Director determines that the new activity is a new product, the Enterprise must await approval of the new product under § 1253.4.

Section 1253.4 provides for public notice and comment of a new product to enable the Director to determine whether the new product is: (1) Authorized by the Charter Act (Fannie Mae) or Corporation Act (Freddie Mac); (2) In the public interest; and (3) Consistent with the safety and soundness of the Enterprise or the mortgage finance and financial system. Among the factors that the Director may consider when determining whether a new product is in the public interest are: (1) The degree to which the new product might reasonably be expected to advance any of the charter purposes of Fannie Mae or Freddie Mac; (2) The degree to which the new product serves underserved markets as set forth in section 1335 of the Safety and Soundness Act (12 U.S.C. 4565); (3) The degree to which the new product is being supplied or could be supplied by non-government-sponsored-enterprise firms; (4) Other alternatives for providing the new product to the market; (5) The degree to which the new product promotes competition in the marketplace or, to the contrary, would result in less competition and greater concentration of economic activity or risk; (6) The degree to which Enterprise provision of the service overcomes natural market barriers or inefficiencies; (7) The degree to which Enterprise provision of the new product might raise or mitigate systemic risks to the mortgage, mortgage finance or financial markets; (8) the degree to which the new product furthers fair housing; and (9) such other factors determined to be appropriate by the Director.

Section 1321(c) of the Safety and Soundness Act (12 U.S.C. 4541(c)) authorizes the Director to grant ''temporary approval'' of the new product if a delay associated with seeking public comment is contrary to public interest. *See id.* at section 1321 paragraphs (c)(2) through (c)(4) (12 U.S.C. 4541(c)(2) through (c)(4)). Accordingly, once FHFA determines that a new activity is a new product, FHFA will publish notice along with a description of the new product for a 30-day public comment period, unless the Director determines that delay associated with first seeking public comment is contrary to public interest. Where the Director determines that exigent circumstances exist such that delay associated with seeking public comment is contrary to public interest, the Director may consider and temporarily approve the new product without providing an advance public comment period. In such circumstances, the Director will provide for a public comment period after granting the Temporary Approval.

In making a determination, the Director will consider all public comments received by the closing date of the comment period. The Director will make a determination on the new product no later than 30 calendar-days after the close of the public comment period. If the Director fails to make a determination on the new product within the 30-day time period, the Enterprise may offer the new product. If the Director approves the new product, the Director may condition such approval upon terms, conditions, and limitations with which the Enterprise must comply. If the Director denies a new product, the Enterprise may not offer the new product.

Where, as a result of public comment or otherwise in the course of considering the new product, FHFA believes that any information in addition to that supplied by the Enterprise is necessary for its decision, FHFA may request such information. FHFA may deny a new product if it does not receive the information requested from the Enterprise in sufficient time to permit adequate evaluation of the information.

Section 1253.5 states that confidential information submitted in support of either a Notice or a public comment submission, is presumed public. An Enterprise or commenter may request confidential treatment, and FHFA will consider such requests upon Enterprise or commenter compliance with the specified requirements.

Section 1253.6 sets forth certification requirements and grounds to nullify an approval. The Notice, any applicable Forms, and supporting information must be certified by an executive officer as that term is defined by 12 CFR 1770.3(g). We note that 12 CFR 1770.3(g) is in the process of being replaced, and § 1230.2 will become the relevant reference. 74 FR 26989 (June 5, 2009). If FHFA discovers a material misrepresentation or omission after the Director has rendered a decision, FHFA may nullify any approval, or terms, conditions, and limitations to such approval. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

Section 1253.7 states penalties for failure to comply. If an Enterprise: (1) Offers a new product or commences a new activity without submitting a Notice; (2) offers a new product or commences a new activity after submitting a Notice before the expiration of time provided for the Director to make a determination; (3) offers a new product after the Director disapproves it; or (4) fails to adhere to any terms, conditions, or limitations established by the Director, the Enterprise must cease offering the new product or engaging in the new activity immediately upon discovery or notice of the events described in this section, unless otherwise informed by the Director in writing.

Upon discovery or notice of any one of these occurrences, the Enterprise must provide the FHFA Director and its board of directors, chief risk officer, internal audit, and compliance officer, a written description of the failure or failures of controls that resulted in the offering of the new product or commencement of new activity in contravention of regulations in this part. The Enterprise must also provide information regarding the steps it has taken and will take to remediate the control failures. Failure to comply with these steps may result in FHFA taking enforcement action.

Section 1253.8 provides that, if the Director approves a new product for one Enterprise, or the new product is otherwise available to that Enterprise under § 1253.4, the other Enterprise may also offer that new product, subject to submitting a request to the Director in the form of a Notice under § 1253.3 and approval by the Director.

Section 1253.9 states that the Director's authority is preserved. The Director's exercise of the Safety and Soundness Act's provisions on prior approval authority for products in no way restricts the safety and soundness authority of the Director over all new and existing products or activities, or the authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an Enterprise. *See* section 1321(f) of the Safety and Soundness Act (12 U.S.C. 4541(f)).

IV. Notice and Public Participation

The notice and comment procedure required by the Administrative Procedure Act is inapplicable to this interim final regulation because it is in the public interest to implement section 1123 of HERA that amends section 1321 of the Safety and Soundness Act (12 U.S.C. 4541) immediately. *See* 5 U.S.C. 553(b)(B). The regulation facilitates the Enterprises' continued ability to meet their public mission in conservatorship, enabling them to contribute to combating the continuing deterioration and volatility of the residential mortgage market. Also, the regulation establishes procedures for the Enterprises to submit notices of new activities and new products for approval. However, because FHFA believes that public comments are valuable, it encourages comments on all aspects of the interim final regulation, and will consider all comments received on or before August 31, 2009 in adopting a final regulation.

V. Effective Date

For the reasons stated in section IV., above, the FHFA for good cause finds that the interim final regulation is immediately effective on July 2, 2009. *See id.* at para. (d)(3).

VI. Regulatory Flexibility Act

FHFA is promulgating this regulation in the form of an interim final regulation and not as a proposed regulation. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2) and 603(a).

VII. Paperwork Reduction Act

The interim final regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 1253

Government-sponsored enterprises; Mortgages; New activities; New products.

Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, under the authorities of

12 U.S.C. 4526 and 12 U.S.C. 4541, the Federal Housing Finance Agency hereby amends Chapter XII of Title 12, Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter C—Enterprises

■ 1. Add part 1253 to subchapter C to read as follows:

PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

Sec.
1253.1 Purpose and authority.
1253.2 Definitions.
1253.3 Notice of new activity.
1253.4 New product approval.
1253.5 Confidential information.
1253.6 Certifying and nullifying an approval.
1253.7 Failure to comply.
1253.8 Availability of new product to an Enterprise after it has been approved for the other Enterprise.
1253.9 Preservation of authority.
Appendix to Part 1253—Prior Approval for Enterprise Products: Instructions and Notice of New Activity Form

Authority: 12 U.S.C. 4526; 12 U.S.C. 4541.

§ 1253.1 Purpose and authority.

The purpose of this part is to establish policies and procedures implementing the prior approval authority for enterprise products, in accordance with section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4541), as amended.

§ 1253.2 Definitions.

For purposes of this part:

Authorizing statute means, in the case of Fannie Mae, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*) and, in the case of Freddie Mac, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

Director means the Director of the Federal Housing Finance Agency or his or her designee.

Enterprise means the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

FHFA means the Federal Housing Finance Agency.

New activity means with respect to an Enterprise, any business line, business practice, or service, including guarantee, financial instrument, consulting, or marketing, that is proposed to be undertaken by the Enterprise either on a standalone basis or as an incident to providing one or more Enterprise products to the market, and which was—

(a) Not initially engaged in prior to July 30, 2008;

(b) Commenced by the Enterprise prior to July 30, 2008, but which, after July 30, 2008, the Enterprise ceased to engage in, and presently intends to resume; or

(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 approved 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 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 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—

(i) The degree to which the new product might reasonably be expected to advance any of the purposes of the Enterprise under the applicable authorizing statute;

(ii) The degree to which the new product serves underserved markets as set forth in section 1335 of the Safety and Soundness Act (12 U.S.C. 4565);

(iii) The degree to which the new product is being supplied or could be supplied by non-government-sponsored-enterprise firms;

(iv) Other alternatives for providing the new product;

(v) The degree to which the new product promotes competition in the marketplace or, to the contrary, would result in less competition and greater concentration of economic activity or risk;

(vi) The degree to which Enterprise provision of the new product overcomes natural market barriers or inefficiencies;

(vii) The degree to which Enterprise provision of the new product might raise or mitigate systemic risks to the mortgage, mortgage finance or other financial markets;

(viii) The degree to which the new product furthers fair housing; and

(ix) Such other factors determined appropriate by the Director.

(4) The Director will disapprove the new product if the Director determines that approval is inconsistent with applicable law, regulation, or FHFA policy thereunder, or contrary to public interest or the safety and soundness of the Enterprise or the mortgage finance or financial system. If the Director disapproves the new product, the Enterprise may not offer the new product.

(5) The Director may establish terms, conditions, or limitations on the Enterprise's offering of the new product to ensure that the product offering is consistent with applicable statutory and regulatory standards, FHFA policies, public interest, or the safety and soundness of the Enterprise or the mortgage finance or financial system.

(6) If the Director fails to make a determination within the 30 calendar-day period that begins on the day after the end of the public comment period, the Enterprise may offer the new product. The Director's failure to make a determination within such 30-day period does not limit or restrict the Director's safety and soundness authority or the authority of the Director to review the new product to determine that the product is consistent with the statutory mission of the Enterprise.

(c) *Temporary approval.* (1) FHFA may approve a new product without first seeking public comments as described in § 1253.4(c) if—

(i) The Enterprise submits a specific request for Temporary Approval that describes the exigent circumstances that make the delay associated with the 30-day public comment period contrary to the public interest and the Director determines that exigent circumstances exist and that delay associated with first seeking public comment would be contrary to the public interest; or

(ii) Notwithstanding the absence of a request by the Enterprise for Temporary Approval, the Director determines on his or her own initiative that there are exigent circumstances that make the delay associated with first seeking public comment contrary to the public interest.

(2) The Director may impose terms, conditions, or limitations on the Temporary Approval to ensure that the new product offering is consistent with applicable statutory and regulatory standards, FHFA policies, public interest, and the safety and soundness of the Enterprise or the mortgage finance system.

(3) If the Director grants Temporary Approval, the Director will notify the Enterprise in writing of the Director's

decision, and include the period for which it is effective and any terms, conditions or limitations. Upon granting of Temporary Approval, FHFA will also publish the request for public comment to begin the process for permanent approval.

(4) If the Director denies a request for Temporary Approval, the Director will notify the Enterprise in writing of the Director's decision, and will evaluate the new product in accordance with paragraphs (a) through (c) of this section.

(d) *Additional information.* The Director may request any information in addition to that supplied in the completed Notice if, as a result of public comment or otherwise in the course of considering the Notice, the Director believes that the information is necessary for his or her decision. The Director may disapprove a new product if he or she does not receive the information requested from the Enterprise in sufficient time to permit adequate evaluation of the information within the time periods set forth in paragraph (c) of this section.

§ 1253.5 Confidential information.

(a) *Information presumed public.* FHFA will treat all information an Enterprise submits in a Notice as public information, except as provided in paragraphs (b) through (d) of this section. FHFA will also treat information provided by a commenter, in response to a notice requesting comment on an Enterprise new product, as public information, except as provided in paragraphs (b) through (d) of this section.

(b) *Confidential treatment request.* An Enterprise or commenter may designate specific information as confidential and request that it not be made publicly available. For any information that an Enterprise or commenter seeks confidential treatment, the Enterprise or commenter is required to submit a complete copy of the Notice or comment, with a specific request for confidential treatment. Simultaneously, the Enterprise or commenter is required to submit a copy of the Notice or comment containing only those portions for which no request for confidential treatment is made, and from which those portions for which confidential treatment is requested have been redacted. The Enterprise or commenter must specify the bases for designated information not being made public as set forth in paragraph (c) of this section.

(c) *Required information.* The Enterprise or commenter is required to provide the following information in support of its request for confidential treatment of the designated information—

(1) Identification of the specific information for which confidential treatment is sought, and the specific Notice for which the information is being submitted;

(2) Explanation of the bases for the proposed confidential treatment including, but not limited to, why the information is ''commercial or financial information obtained from a person and privileged or confidential'' as that phrase is used in Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), and § 1202.4(a)(4) of this chapter;

(3) Explanation of the relevance and necessity of the information to whether the Notice should be approved or denied;

(4) Explanation of how disclosure of the information would result in substantial harm to the competitive position of the Enterprise or commenter;

(5) Explanation of whether the information is available to the public and the extent of any previous disclosure to third parties;

(6) Justification of the time period during which the Enterprise or commenter asserts that the material should not be available for public disclosure; and

(7) Any other information that the Enterprise or commenter seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

(d) *FHFA determination.* FHFA will determine whether the designated information may be withheld from public disclosure and will notify the Enterprise or commenter of the determination. In the event that FHFA determines the information may not be withheld from public disclosure, the Enterprise or commenter may withdraw the information or consent to public disclosure. Requests for confidential treatment that do not comply with paragraphs (b) and (c) of this section will not be considered.

§ 1253.6 Certifying and nullifying an approval.

(a) An Enterprise shall certify, through an executive officer, as that term is defined by § 1770.3(g) of this title, that any filing or supporting material submitted to FHFA pursuant to regulations in this part contains no material misrepresentations or omissions. FHFA may review and verify any information filed in connection with a Notice. If FHFA discovers a material misrepresentation or omission after the Director has rendered a decision on the filing, FHFA may nullify any approval or modify the terms, conditions, and limitations to such approval. For purposes of this paragraph, an Enterprise's authority to offer a new product or engage in a new activity by reason of the Director's not having made an explicit determination within the statutory time period constitutes an approval.

(b) Any person responsible for any material misrepresentation or omission in a submission or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

§ 1253.7 Failure to comply.

(a) Unless the Director otherwise informs the Enterprise in writing, an Enterprise must cease offering a new product or engaging in a new activity immediately upon discovering or receiving notice from the Director that the Enterprise has—

(1) Offered a new product or commenced a new activity without submitting a Notice;

(2) Offered a new product or commenced a new activity after submitting a Notice but before approval is granted, and before the expiration of the time provided for the Director to make a determination under §§ 1253.3 and 1253.4;

(3) Offered a new product after the Director disapproved it; or

(4) Failed to adhere to any terms, conditions or limitations established by the Director in his or her approval of a new product or activity.

(b) Within five (5) business-days of the discovery or notice of any of the events described in paragraph (a) of this section, the Enterprise must provide the Director a written description of the failure or failures of controls that resulted in the offering of the new product or commencement of the new activity in contravention of this regulation, and the steps that the Enterprise has taken or will take to remediate the control failures. The Enterprise must provide the board of directors of the Enterprise and chief risk officer, internal audit, and compliance officer of the Enterprise with a copy of the written description on the same date the description is provided to the Director of FHFA.

(c) In the event that the Enterprise elects to resubmit the Notice of a new product or new activity that was undertaken in contravention of this regulation, the resubmission must provide sufficient documentation of the effectiveness of the remediation efforts described in paragraph (b) of this section.

(d) Failure to comply with paragraphs (a) or (b) of this section above may result in FHFA's taking enforcement action, including pursuant to 12 U.S.C. 4631 (orders to cease and desist), 12 U.S.C. 4632 (temporary orders to cease and desist), and 12 U.S.C. 4636 (civil money penalties).

§ 1253.8 Availability of new product to an Enterprise after it has been approved for the other Enterprise.

(a) If the Director approves a new product for one Enterprise or the new product is otherwise available to that Enterprise under § 1253.4, the other Enterprise may also undertake that new product, subject to submitting a request to the Director in the form of a Notice under § 1253.3 and approval by the Director.

(b) The Director may require such further information from the requesting Enterprise as he or she deems necessary to approve or deny the request. Approving the request does not require public notice and comment.

§ 1253.9 Preservation of authority.

(a) The Director's exercise of his or her authority pursuant to the prior approval authority for products under section 1321 of the Safety and Soundness Act (12 U.S.C. 4541), and this regulation and other issuances in no way restricts—

(1) The safety and soundness authority of the Director over all new and existing products or activities; or

(2) The authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an Enterprise.

Appendix to Part 1253—Prior Approval for Enterprise Products—Instructions and Notice of New Activity Form

Appendix to Part 1253

PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

INSTRUCTIONS for the NOTICE of NEW ACTIVITY FORM

INSTRUCTIONS FOR NNA SUBMISSION

GENERAL INSTRUCTIONS

The Notice of New Activity (NNA) submission addresses two functions of the Federal Housing Finance Agency—it provides information on activities that may constitute a new product or new activity under the Housing and Economic Recovery Act of 2008 (12 USC 4541) and on activities that do not constitute a new product subject to the approval provisions of the law, but represent an activity that merits safety and soundness review under multiple provisions of the Federal Housing Enterprises Financial Safety and Soundness Act (12 USC 4501 *et seq.*)

Once the submission is made, FHFA will first determine if the activity is a new product and will direct consideration of such product under the provisions of the statute and regulation, which may involve public comment. If the new activity is determined not to be a new product, then the information contained in the submission will be employed by FHFA for a review of safety and soundness matters as part of its routine supervisory program.

A. Notice of New Activity (NNA) Submission

1. *New Activity.* A new activity for purposes of this submission includes the planned deployment of a new activity that constitutes a new product under the approval provision of FHEFSSA as amended by HERA or a significant expansion or alteration of an existing activity or product that does not require approval under HERA amendments of 2008 but is to be reviewed under safety and soundness provisions of the Act. A new activity may include alteration of an existing activity in such a manner as to affect significantly the risk, management, capital effect, operational controls, legal effect, anticipated business impact on the Enterprise (dollar effect), and accounting or taxation for such activity. This will include a pilot program.

A new activity does not include a minor, non-substantive transaction or activity that does not involve significant credit, interest rate, operational (including internal control and accounting) or reputation risk separate and apart from an existing activity. In general, a new activity would not include an increase in an existing product or activity of less than a 25% investment increase. For

example, if an existing multi-family mortgage purchase activity will be altered to require collection and analysis of additional loan data to facilitate Enterprise purchases, even though the change may be labeled as "new" by the Enterprise in its communications, the Enterprise may inform FHFA that it does not constitute a new activity but rather an activity or product addition or enhancement. The Enterprises will work with examiners to assure clarity regarding whether an activity is new and fits within the Notice of New Activity (NNA) submission requirement.

2. *New Product.* A new product is determined by the Director of the Federal Housing Finance Agency (FHFA) in line with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and the FHFA new product regulation at 12 CFR part 1253.

A 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; and (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; or (c) any activity that is substantially similar to the activities described in (a) and (b).

3. *Expanded activity or product.* In general, a significant expansion of an activity or product constitutes an expanded existing activity or product, subject to a submission requirement for a safety and soundness review, if it fits one or more of the following criteria:

-- expanded scope of an activity or product, including a significant increase in size, in risk levels (credit, interest rate, market or operational) or a significant change in activity or product limits or marketing;

-- movement from a pilot program or product test to a fully deployed activity or product; or

-- such other criteria as provided in writing by the Director.

4. *Consultation with FHFA.* Prior to submitting a NNA, an Enterprise may seek clarification that while an initiative meets one or more of the criteria for an expanded activity or product, the change does not meet a level of significance to justify filing a NNA or presents timing concerns that are not addressed under procedures set forth below.

B. Exemptions

The exemptions from submitting a NNA included in the definitions provided above do not exempt reporting or other communications to examiners or other offices under separate requests by or reporting requirements of FHFA.

C. Procedures and Content

1. *Submission to FHFA*

(a) *Normal Submission.* Completed notices of new business activities or products, or expansion or alteration of an existing activity or product, should be provided on a NNA to FHFA. If a determination is made that an activity represents a new product and that a public comment period is required, the Director shall so inform the Enterprise as soon as practicable. Unless notified otherwise in writing by FHFA, an Enterprise may not undertake a new activity until more than fifteen (15) business days after a completed notice was submitted to FHFA, or a new product until more than sixty (60) days after a determination that an activity represents a new product.

(b) *Temporary Approval.* An Enterprise may request temporary approval for a new product pursuant to 12 CFR 1253.4(c) upon exigent circumstances that make the delay associated with the 30-day public comment period contrary to the public interest. If an Enterprise requests temporary approval, it shall indicate such request on the NNA along with any supporting information. An Enterprise may request temporary approval for an expanded product or activity where circumstances exist meriting such temporary approval, such as a compelling business need, public interest, judicial order, regulatory directive from another federal agency or other emergency situation. Such request should be made at the time of submitting a NNA.

(c) *Confidentiality.* Information labeled confidential or proprietary contained in a NNA will be considered for such treatment by FHFA pursuant to 12 CFR 1253.5.

(d) *Completing NNA Form.*

(i) Provide a response or comment on every item in the Form. If an item on the Form is not applicable or relevant, state so and briefly explain why.

(ii) Responses or comments should be comprehensive; address all issues contained in an item.

(iii) Provide appropriate supporting documentation. Indicate on the form the number of the supporting item(s) and on the attached item(s) to which requirement the documentation refers.

(iv) If all items are not addressed, or if the information does not provide FHFA with sufficient bases upon which to make a determination, FHFA will not consider the Form received and will not process the Form.

(e) *Submitting the Form*

(i) Submit an electronic copy of the Form and supporting documents to: newproducts@fhfa.gov. Be sure to clearly label supporting documents and reference the item(s) to which they relate; and,

(ii) Submit hard copy of the Form and supporting documents to: Senior Associate Director for Housing Mission and Goals, Office of Housing Mission and Goals, Federal Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

D. Supplemental Instructions

Name of Proposed Activity/New Product	Insert the name by which the Enterprise refers to the proposed new activity/new product.
Item 1	The indication that a new activity is or is not a new product should include detailed information in support of such a determination. Reference should be made to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, and to FHFA regulation on new products. Such supporting information should include a legal analysis and supporting historical information. Even if a new product determination has been previously made by FHFA, the Enterprise should note such determination and why the new activity does or does not fit within such prior determination as well as whether there are safety and soundness or charter matters that require additional consideration for the Enterprise to offer such activity or product. The description should address the factors the Director may consider when determining whether a new activity is "substantially similar" to the activities described in 12 USC 4541(e)(1)(A) and (B) or other activities that have been previously approved in accordance with 12 USC 4541 which include: (1) if the activity in question is a product; (2) whether the new activity is authorized under the Charter Act (Fannie Mae) or Corporation Act (Freddie Mac); (3) whether the activity in question represents an upgrade to the way an approved product is delivered; (4) whether the activity in question poses a significant change in risk to the Enterprise or mortgage finance system from a previously approved product or activity; (5) whether the activity in question involves a significant change in terms, conditions, or limitations expressly contained in any prior approval granted under this part; (6) whether the activity in question poses a significant change in its effect on the public interest compared to a previously approved product or activity; (7) the tradeoff between any combinations of changes in risk, public interest, and safety and soundness; (8) whether the activity in question is likely to require the dedication of significantly more Enterprise resources; (9) whether the activity in question requires approval by regulators other than FHFA; (10) whether the activity in question involves new classes or types of borrowers, investors, or counterparties or new classes or types of collateral; or (12) such other factors as FHFA determines appropriate.

Item 5	Information about the management structure should include names and titles. Organizational charts should be attached. Staffing plans should indicate authorized and on-board levels as of a stated date.
Item 6	The description should address the factors the Director may consider when determining whether the proposed new activity is in the public interest. These factors include: (1) the degree to which the proposed new activity might reasonably be expected to advance any of the four charter purposes of Fannie Mae or Freddie Mac; (2) the degree to which the activity serves underserved markets as set forth at 12 USC 4565; (3) the degree to which the activity is being supplied or could be supplied by non-government-sponsored-enterprise firms; (4) other alternatives for providing the service to the market; (5) the degree to which the new activity promotes competition in the marketplace or, to the contrary, would result in less competition and greater concentration of economic activity or risk; (6) the degree to which Enterprise provision of the service overcomes natural market barriers or inefficiencies; (7) the degree to which Enterprise provision of the activity might raise or mitigate systemic risks to mortgage and financial markets; (8) the degree to which the activity furthers fair housing; and (9) such other factor determined appropriate by FHFA.
Item 8	This includes applications for patents, and requires copies of correspondence FROM the Enterprise TO other regulators or foreign governments. "Foreign governments" includes agencies and regulatory bodies of foreign governments.
Item 15	The description should indicate whether and the extent to which the proposed new activity increases or decreases risk for each risk component (credit, market, model, governance (including reputation), and operational risk).

The instructions provided here and the information required by the FHFA Notice of New Activity Form may be modified by FHFA from time to time, and written notice will be provided in advance to the Enterprises of any such modification.

	FEDERAL HOUSING FINANCE AGENCY	**NNA NUMBER ASSIGNED** **NNA-F[redacted]-200 ☐ – ☐ ☐ ☐**

12 CFR Part 1253 – Appendix

NOTICE OF NEW ACTIVITY FORM

SEE INSTRUCTIONS FOR INFORMATION REQUIRED TO BE SUPPLIED ON THIS FORM

Enterprise: _____

Purpose of the Proposed New Activity/New Product/Expanded Activity Submission

The Notice of New Activity (NNA) submission addresses two functions of the Federal Housing Finance Agency—it provides information on activities that may constitute a new product or new activity under the Housing and Economic Recovery Act of 2008 (12 USC 4541) and on activities that do not constitute a new product subject to the approval provisions of the law, but represent an activity that merits safety and soundness review under multiple provisions of the Federal Housing Enterprises Financial Safety and Soundness Act (12 USC 4501 et seq.)

Once the submission is made, FHFA will first determine if the activity is a new product and will direct consideration of such product under the provisions of the statute and regulation, which may involve public comment. If the new activity is determined not to be a new product, then the information contained in the submission will be employed by FHFA for a review of safety and soundness matters as part of its routine supervisory program.

Enterprise Contact Information:

Name:
Title:
Telephone Number:
Email Address:

Name of the Proposed New Activity/New Product/Expanded Activity:

Description of the Proposed New Activity/New Product/Expanded Activity:

1. *Description of Activity/New Product.* Provide a complete and specific description of the proposed new activity, and provide the Enterprise's view of why this proposed new activity should or should not be considered a new product.

(For example, explain why an activity relates to an upgrade of the automated underwriting system in existence as of July 30, 2008, relates to a modification to mortgage terms and conditions without altering the underlying transaction or relates to any activity substantially similar to any existing activity, as provided under 12 USC 4541(e) and 12 CFR Part 1253).

[If the activity is considered a new product, insure that any information the Enterprise feels should not be made public is so designated with an explanation for such designation. Also, if the activity is considered a new product, please provide the Enterprise's view on whether the new product should be considered for temporary approval.]

NOTE: the term "new activity" as employed here, encompasses "new product." Also see definition of "new activity" in 12 CFR 1253.2.

2. *Business Rationale and intended market.* Describe the business rationale for the proposed new activity. If the proposed new activity represents a business line for the Enterprise, describe the business line, and the rationale for the business line, and what products are being offered or proposed to be offered under such business line. Also describe the intended market for the proposed activity, including any market research performed relating to the proposed activity.

3. *Unusual or Unique Characteristics.* Describe any unusual or unique characteristics of the activity, including those involving reputation risks.

4. *Projected Size and Start Date of the New Activity.* State the anticipated commencement date for the proposed new activity. Describe and provide analysis, including assumptions, development expenses, expectations for the impact of and projections for the projected quarterly size (for example, in terms of cost, personnel, volume of activity, or risk metrics) of the proposed new activity for the first 12 quarterly periods of deployment and projected profit and loss..

5. *Units and Personnel with Responsibility over the New Activity.* Describe the Enterprise business units(s) involved in conducting the proposed new activity, including any non-Enterprise affiliation or subsidiary relationships, and the roles of each. Describe the management structure, including proposed manager(s) of the proposed new activity; reporting lines, planned oversight, and review of the activity; and proposed staffing for the activity.

6. *Impact on Public Interest.* Describe the impact of the proposed new activity on the public interest compared to a previously approved activity. Provide sufficient information to address the factors the Director may consider when determining whether the proposed activity is in the public interest, including: (1) the degree to which the proposed product might reasonably be expected to advance any of the four charter purposes of Fannie Mae or Freddie Mac; (2) the degree to which the proposed product serves underserved markets

as set forth at 12 USC 4565; (3) the degree to which the proposed product is being supplied or could be supplied by non-government-sponsored-enterprise firms; (4) other alternatives for providing the service to the market; (5) the degree to which Enterprise provision of the service overcomes natural market barriers or inefficiencies; (6) the degree to which Enterprise provision of the proposed product might raise or mitigate systemic risks to mortgage and financial markets; and (7) the degree to which the proposed product furthers fair housing.

7. *Legal Analysis.* Provide a legal opinion on whether the proposed activity complies with the Enterprise's authorizing statute, does or does not constitute a new product and other legal matters relating to the deployment and offering of the new product.. Provide copies of legal opinions from in-house or outside counsel relating to the Enterprise's proposed activity. If the Enterprise is relying on the "necessary and incidental" authority, describe in detail how the proposed new activity is necessary and incidental to one or more specific charter authorities. Legal analysis should include other non-charter compliance matters. If legal analysis was provided for a similar activity such analysis may be appended with such additional analysis as is appropriate.

8. *Other Regulatory Applications.* Provide copies of all notice and/or application documents— including any application for patents– the Enterprise has submitted to other regulators (federal, state or local) or to foreign governments relating to the proposed new activity. Include all presentation documents, correspondence with the regulator or government pertaining to the application or notice, and all decisional documents issued by the regulator or foreign government.

9. *Relationships with non-secondary market participants.* Describe the extent to which the proposed new activity includes relationships with non-secondary market participants, including, but not limited to: borrowers, real estate brokers, housing counselors, mortgage brokers and government officials.

10. *Business Requirements.* Describe any business requirements for the proposed new activity, including for example, data processing systems, accounting systems, performance tracking systems, and interface capacity with other Enterprise systems and departments.

11. *Acquisition.* If an acquisition is involved, describe the financial features of the transaction and provide pro forma financials of the acquiree.

12. *Accounting Treatment.* Explain whether the proposed new activity is expected to have an accounting effect; explain any accounting treatment proposed for the new activity.

13. *Tax Implications.* Describe the anticipated tax impact of the proposed new activity, and provide analysis, including assumptions, expectations for the impact of, and projections for tax liabilities (credits) associated with the proposed new activity on a quarterly basis for the first 12 quarterly periods of the new activity's commencement.

14. *Earnings and Capital Implications.* Describe, explain and provide analysis, including assumptions, expectations for the impact of, and projections for the anticipated impact to earnings and capital of the proposed new activity on a quarterly basis for the first 12 quarterly periods of the new activity's commencement.

15. *Risk Implications.* Describe the impact of the proposed new activity on the risk profile of the Enterprise and on the mortgage finance system from a previously approved activity. Provide sufficient information to document whether the impact represents a material change to the Enterprise's risk profile.

16. *Performance reports and Risk Controls.* Describe the type of information that will be contained in the routine reports that will be generated to capture the performance of the proposed activity, and include prototype of such performance reports. Describe any and all routine and special controls in place or planned to be put in place for the proposed new activity. Include in the description: operational risk controls; credit risk controls; market risk controls; model risk controls; and governance (including reputation) risk controls. To the extent possible, quantify the risks associated with the proposed activity.

17. *Other Safety and Soundness Implications.* Describe how the proposed new activity is consistent with the safety and soundness of the Enterprise and the mortgage finance and financial system. Include information about the process the Enterprise went through to develop the proposed new activity and to obtain necessary internal approvals (including at the executive level, the executive committee level and/or Board of Directors level). Provide copies of any: presentations made to executives, executive committees or Board of Directors; minutes of meetings at which such presentations were made; and decision documents. FHFA will automatically consider such Board presentations, minutes, and decisions documents for confidential treatment under 12 CFR 1253.5.

CERTIFICATION:

To the best of my knowledge and belief, the information contained in this filing, including any supporting materials, contains no material misrepresentations or omissions, is true, correct and complete.

Signed: _____

Print Name: _____

Title: _____

Date: _____

Dated: June 22, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–15304 Filed 7–1–09; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 26, 121, 125, and 129

[Docket No. FAA–2005–22997; Amendment Nos. 26–3, 121–345, 125–57, and 129–47]

RIN 2120–AI23

Reduction of Fuel Tank Flammability in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correcting amendments.

SUMMARY: The Federal Aviation Administration (FAA) is correcting inadvertent errors that appeared in a previously-published final rule. That final rule amended FAA regulations that require operators and manufacturers of transport category airplanes to take steps that, in combination with other required actions, should greatly reduce the chances of a catastrophic fuel tank explosion. In that final rule, erroneous compliance dates were shown. This document changes those compliance dates accordingly. It also corrects other non-substantive errors that have come to our attention.

DATES: Effective July 2, 2009.

FOR FURTHER INFORMATION CONTACT: If you have technical questions about this action, contact Michael E. Dostert, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2132, facsimile (425) 227–1320; e-mail: *mike.dostert@faa.gov*. Direct any legal questions to Doug Anderson, ANM–7, FAA, Office of Regional Counsel, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007, e-mail *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration (FAA) published a final rule, request for comments entitled ''Reduction of Fuel Tank Flammability in Transport Category Airplanes'' in the **Federal Register** on July 21, 2008 (73 FR 42444).

Recently, it was brought to our attention that the effective date shown in the document was inconsistent with the Congressional Review Act. This act specifies that, for major rules like this one, the effective date is no sooner than 60 days after publication or 60 days after submission to Congress, whichever occurs later. Since this rule was not received by the Government Accounting Office until October 27, 2008, the effective date of the rule per the Congressional Review Act is December 26, 2008, not September 19, 2008. Because compliance dates were calculated based on a September 19, 2008 effective date, those dates are incorrect. This document makes the appropriate amendatory changes necessary to reflect the new compliance dates. We also found some minor errors in §§ 121.1117, 125.509 and 129.117 and are correcting them in this document.

List of Subjects

14 CFR Part 26

Aircraft, Aviation safety, Continued airworthiness.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter 1 of Title 14, Code of Federal Regulations (CFR) parts 26, 121, 125, and 129, as follows:

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 26 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

■ 2. Revise § 26.5 to read as follows:

§ 26.5 Applicability table.

Table 1 of this section provides an overview of the applicability of this part. It provides guidance in identifying what sections apply to various types of entities. The specific applicability of each subpart and section is specified in the regulatory text.

TABLE 1—APPLICABILITY OF PART 26 RULES

	Applicable sections		
	Subpart B	Subpart D	Subpart E
	EAPAS/FTS	Fuel tank flammability	Damage tolerance data
Effective date of rule	December 10, 2007	December 26, 2008	January 11, 2008
Existing [1] TC Holders	26.11	26.33	26.43, 26.45, 26.49
Pending [1] TC Applicants	26.11	26.37	26.43, 26.45
Existing [1] STC Holders	N/A	26.35	26.47, 26.49
Pending [1] STC/ATC Applicants	26.11	26.35	26.45, 26.47, 26.49
Future [2] STC/ATC Applicants	26.11	26.35	26.45, 26.47, 26.49
Manufacturers	N/A	26.39	N/A

[1] As of the effective date of the identified rule.
[2] Application made after the effective date of the identified rule.