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Cynthia Long,

Administrator, Food and Nutrition Service.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0144]

RIN 3150–AK87

List of Approved Spent Fuel Storage Casks: NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of January 18, 2023, for the direct final rule that was published in the **Federal Register** on November 4, 2022. This direct final rule amended the NAC International, Inc. MAGNASTOR® Storage System listing within the list of approved spent fuel storage casks to include Amendment No. 10 to Certificate of Compliance No. 1031.

DATES: The effective date of January 18, 2023, for the direct final rule published November 4, 2022 (87 FR 66539), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2022–0144 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0144. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The final amendment to the certificate of compliance, final changes to the technical specifications, and final safety evaluation report can also be viewed in ADAMS under Accession No. ML22349A467.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bernard White, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6577, email: *Bernard.White@nrc.gov* and Tyler Hammock, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1381, email: *Tyler.Hammock@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On November 4, 2022 (87 FR 66539), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the NAC International, Inc. MAGNASTOR® Storage System listing in the ''List of approved spent fuel storage casks'' by adding Amendment No. 10 to Certificate of Compliance No. 1031. Amendment No. 10 incorporates a new metal storage overpack. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on January 18, 2023. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: December 20, 2022.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–28025 Filed 12–23–22; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1253

RIN 2590–AA17

Prior Approval for Enterprise Products

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency) is adopting a final rule that establishes a process for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) to provide advance notice to the FHFA Director before offering a new activity to the market and to obtain prior approval from the Director before offering a new product to the market.

DATES: This final rule is effective February 27, 2023.

FOR FURTHER INFORMATION CONTACT: Susan Cooper, Senior Policy Analyst, Office of Housing and Regulatory Policy, (202) 649–3121, *susan.cooper@fhfa.gov;* or Dinah Knight, Assistant General Counsel, Office of General Counsel, (202) 748–7801, *dinah.knight@fhfa.gov,* Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. These are not toll-free numbers. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Background

In recognition of the significant impact that the activities of the Enterprises have on the U.S. housing finance system, market participants, and the broader economy, section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*) (the Safety and Soundness Act or Act) requires the FHFA Director to review new Enterprise activities and to approve new Enterprise products before these activities and products can be offered to the market.

Specifically, the Act requires an Enterprise to provide ''written notice'' to the Director for a determination of whether 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 that the new activity is a new product,

the Enterprise shall ''obtain the approval of the Director . . . before initially offering the product.'' *See* section 1321(a) of the Safety and Soundness Act (12 U.S.C. 4541(a)). In considering any request for approval of a new product, the Director shall determine whether the proposed new product is authorized pursuant to certain sections of the Enterprises' authorizing statutes,[1] in the public interest, and consistent with the safety and soundness of the Enterprise or the mortgage finance system. *See* section 1321(b) of the Safety and Soundness Act (12 U.S.C. 4541(b)).

Certain activities are excluded 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 mortgages that are purchased or guaranteed by an Enterprise but that do not alter the nature of the underlying transaction as residential mortgage financing; and (3) activities that are substantially similar to the activities in (1) and (2) and to new products that have been approved by the Director (substantially similar activities). *See* section 1321(e) of the Safety and Soundness Act (12 U.S.C. 4541(e)). The 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. *See* sections 1321(c) and (e) of the Safety and Soundness Act (12 U.S.C. 4541(c) and (e)).

B. The Interim Final Rule and Notice of Proposed Rulemaking

FHFA adopted an interim final rule for Prior Approval for Enterprise Products which became effective on July 2, 2009, and which remains in effect until the effective date of this final rule. *See* interim final rule, 12 CFR part 1253.[2] On November 9, 2020, FHFA published in the **Federal Register** a Notice of Proposed Rulemaking on Prior Approval for Enterprise Products (Proposed Rule) that, if finalized, would replace the interim final rule. *See* Proposed Rule, 85 FR 71276. FHFA requested public comment on all aspects of the Proposed Rule. The final rule reflects adoption, clarifications, or changes based on the comments received, as well as other technical and conforming changes. A full discussion of the comments received, the Agency's responses, and a section-by-section analysis of the final rule are included in the subsequent sections.

II. Discussion of Comments and Agency Response

A. Overview of Comments Received

FHFA received 17 comments on the Proposed Rule. Commenters included the Enterprises, National Association of Home Builders, National Taxpayer Union, American Enterprise Institute, Community Home Lenders Association, National Association of Federal Credit Unions, American Bankers Association, Mortgage Bankers Association, Center for Responsible Lending, Independent Community Bankers of America, Housing Policy Council, U.S. Mortgage Insurers, National Association of Realtors, Manufactured Housing Institute, Consumer Federation of America, and one lender. Most commenters were generally supportive of the Proposed Rule and many suggested areas where it could be improved or clarified.

Comments received and FHFA's responses are summarized by topic below. In general, commenters raised concerns with the proposed submission process for a new activity, one aspect of which provided that the determination of whether a new activity was a new product would be subject to Agency discretion. Some commenters praised the explicit inclusion of pilots in the scope of a new activity while also sharing their concerns about how pilots are conducted by the Enterprises. Other commenters preferred that pilots be excluded from the requirements of the final rule. Several commenters suggested further changes to the descriptions of a new activity and a new product, including an expansion of the exclusions to reference technology that assists the Enterprises in performing their core functions. Commenters also suggested additional public interest factors that should be considered when evaluating a new product, particularly within the context of the impact of a proposed new product on competition. Many commenters also noted that the Proposed Rule, unlike the interim final rule, did not include a provision for requesting confidential treatment of information submitted to FHFA. Lastly, commenters recommended that the final rule impose on FHFA a requirement to report on the Enterprises' new activity submissions and FHFA's decisions on those submissions.

B. FHFA Determination and Approval of a New Product

Submission Process. FHFA proposed a notice process that would have required an Enterprise to make a single submission for a new activity and a new product (notice of new activity). FHFA would evaluate the notice and determine whether the new activity was subject to prior approval as a new product. The Director would make the new product determination based on whether the new activity merited public notice and comment on matters of compliance with the Enterprise's authorizing statute, safety and soundness of the Enterprise or the mortgage finance system, or serving the public interest. FHFA also proposed streamlined and simplified content for the notice of new activity that consolidated interrelated content from the sets of instructions in the interim final rule but would still be sufficient to conduct a complete assessment of associated risks and to weigh those risks against the benefits to public interest.

Commenters had varying views on the submission process. Two commenters supported the proposed submission process, with one noting that the scope of information was sufficient and guidelines for submission were appropriate ''and should help FHFA develop public notices that provide potential commenters with relevant information about future Enterprise activities.'' However, other commenters expressed concerns with and/or provided recommendations for the submission process. First, many found the breadth of information requested for a new activity disproportionately burdensome since only advance notice to FHFA is required by statute. These commenters instead viewed the scope of information as more appropriate for a request for prior approval of a new product. One commenter observed that the Proposed Rule requires the same information, at the same level of detail, for a new activity and for a new product. Another commenter urged FHFA to develop a streamlined process to permit the Enterprises to submit new activities to FHFA without the extensive detail required for new products. Commenters also believed that the valuable time and resources used to prepare detailed notices for new activities would inhibit the Enterprises' ability to pursue initiatives. In addition, the Enterprises believed that requiring an executive officer to certify that the notice of new activity did not contain material misrepresentations or

[1] Fannie Mae's authorizing statute is the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*). Freddie Mac's authorizing statute is the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

[2] 74 FR 31602 (July 2, 2009).

omissions was unduly burdensome for a new activity (but not a new product) because it would entail establishing processes and dedicating resources to support such a certification. One Enterprise asserted that ''robust internal controls are sufficient to ensure quality submissions [for a new activity] without the need for an accuracy and completeness certification to FHFA.''

Next, commenters recommended that the Enterprises, not FHFA, should make the initial determination on whether a new activity is a new product. Under that approach, the Enterprise would need to determine whether to submit either a notice of new activity or a request for prior approval of a new product. One commenter believed that the ''. . . enhanced definitions of a new activity and a new product in the proposed rule are sufficient for an Enterprise to make that determination.'' The commenter recommended that FHFA re-introduce from the interim final rule the concept of an Enterprise consulting with FHFA prior to submitting a notice of new activity to determine whether a new activity is a new product. Another commenter stated that ''. . . whether FHFA ultimately adopts a one- or two-step submission process, the final rule should make clear that an Enterprise may withdraw a submission at any time.''

Lastly, some commenters expressed concerns about the level of discretion that the Director would have in determining whether a new activity was a new product. One commenter argued that the discretionary authority granted to the Director in the Proposed Rule appeared to circumvent Congress's requirement that all Enterprise offerings classified as new products be subject to public notice and comment. Other commenters were concerned that the discretion granted under the final rule could result in opaque decision-making.

After careful consideration, FHFA is modifying the submission process to address commenters' concerns about burden. FHFA agrees with commenters that the information required for FHFA to review a new activity (versus a new product) can be distinguished without compromising FHFA's ability to complete its assessment. FHFA also agrees that even for the review of a new product the information requirements could be further streamlined. The final rule reflects changes accordingly. These changes should alleviate some of the burden associated with the submission process and conserve valuable resources at the Enterprises, as well as FHFA. However, FHFA disagrees with the Enterprises' assertion that requiring an executive officer to certify to the accuracy of a new activity submission is unduly burdensome and will retain that requirement in the final rule. As stated by one Enterprise, it already has robust internal controls and governance processes for developing and offering a new activity, and these controls and processes invariably involve an executive officer's judgement, expertise, and approval. Therefore, FHFA does not believe it is an undue burden to require an executive officer to certify to the accuracy of the information contained in a notice of new activity.

In terms of allowing an Enterprise to make the initial determination whether to provide prior notice of a new activity or request prior approval for a new product, FHFA still believes that it is not practical to require an Enterprise to identify in advance a new product—as distinct from a new activity that is not a new product—for purposes of determining which type of submission to make to the Agency. The Act does not provide definitions for a product or an activity. As a result, the Proposed Rule provided distinguishing characteristics to implement the statutory mandate for the Director to approve a new product prior to an Enterprise offering that product. The statutory standard for approving a new product includes determinations that the product complies with an Enterprise's authorizing statute, is in the public interest, and is consistent with the safety and soundness of the Enterprise or the mortgage finance system. *See* section 1321(b) of the Safety and Soundness Act (12 U.S.C. 4541(b)). Because of the lack of statutory definitions, and the breadth of the statutory considerations relevant to approval, FHFA concludes that a more precise definition of a new product is not feasible, and that the Director must be able to consider each new activity, and whether that new activity should be deemed a new product, based on a broad consideration of all the facts and circumstances it presents.[3]

However, FHFA agrees that the final rule should have an explicit provision that allows an Enterprise to consult with FHFA prior to submitting a notice of new activity. If, based on that consultation, the Director determines that a new activity is a new product, then the review process could be expedited. FHFA believes that including a consultation provision and pairing it with abbreviated submission requirements for new activities and more detailed information requirements for new products (that still reflect streamlining of the information requirements from the Proposed Rule) should facilitate the Enterprises' compliance with the final rule. Further, even though the Proposed Rule implicitly permitted an Enterprise to withdraw a submission at any time, FHFA has also included language in the final rule that explicitly permits an Enterprise to discontinue its efforts to pursue a new activity once the Director has determined it to be a new product.

Timeframes for FHFA Review and Public Comment Period. FHFA proposed that before commencing any new activity, an Enterprise must submit a notice of new activity, which would not be considered complete and received for processing until the information required by the Proposed Rule had been submitted, including any follow-up information requested by FHFA. After FHFA deemed the submission complete and received, the Director would have 15 days to determine whether the new activity was a new product. If the Director determined that the new activity was a new product, FHFA would publish a public notice soliciting comments on the new product for a 30-day period. The Director would approve or disapprove the proposed new product no later than 30 days after the close of the public comment period. The Proposed Rule defined ''days'' as calendar days. The 15 days for FHFA to review a new activity and make a new product determination, the 30-day public comment period, and the 30 days for FHFA to complete its review of a proposed new product following the close of the public comment period are established by statute. The Act also provides that the Enterprise may offer the new activity or new product to the market if FHFA does not render a decision within the statutory timeframes for review.

Several commenters noted that the Proposed Rule did not provide specific timeframes for FHFA to deem a submission complete or publish a notice for public comment once the Director determined that a new activity was a new product and recommended that the final rule include such timeframes. One commenter stated that ''[a]llowing FHFA unlimited time to notify the Enterprises that a submission is complete and received practically renders moot the expedited 15-day review,'' and that this unlimited time period should be reconsidered. Another commenter argued that the 15-day period for a new activity review should

[3] When adopting the interim final rule, FHFA concluded that ''the determination whether a new activity is a new product in specific instances is committed to agency discretion by law,'' 74 FR 31602, 31603 (July 2, 2009). *See Samuels* v. *FHFA,* 54 F. Supp. 3d 1328 (S.D. Fla. 2014).

start the day that FHFA receives the notice and that ''the period should be tolled . . . any time FHFA determines a submission to be incomplete . . . resuming only when the Enterprise delivers the information requested.'' Another commenter believed that the final rule should establish a specific timeframe for FHFA to prepare a public notice, stating that ''at most, a five business-day deadline for FHFA to publish the public notice should provide FHFA with a reasonable period to prepare the notice based on the information provided by the Enterprise.'' A few commenters also recommended that the final rule have a comment period longer than 30 days. One commenter recommended that FHFA ''provide, within the statutory constraints, the public with more time to provide comments on new products'' by excluding ''all weekends and holidays (as is the current practice under the interim final rule).''

After considering these comments, FHFA is not including in the final rule specific timeframes for deeming a submission complete and received or for publishing a public notice. However, FHFA will act expeditiously in its review of a submission, and the final rule states that FHFA will publish a public notice ''without delay.'' FHFA recognizes that the Act is designed to ensure that FHFA moves quickly in its review. However, the Agency also recognizes that it has a responsibility to conduct due diligence and review a submission to ensure that the Enterprise has provided the required information for the Director to make the determination of whether a new activity is a new product. Similarly, FHFA believes that it has a responsibility to carefully prepare a notice for public comment that accurately reflects the Enterprise's proposed new product and provides the public with enough information to provide meaningful comments. Regarding comments to extend the public notice and comment period, FHFA will apply the practice it uses when publishing proposed and final regulations, which is to publish the public notice on the Agency's website the same day that it submits it to the **Federal Register**. Given that the **Federal Register** is unlikely to publish the public notice for a new product immediately, the public will have the opportunity to preview the notice on FHFA's website before the comment period officially begins.

Standards for Approval. In line with the Act, FHFA proposed that the Director may approve a new product if the Director determined that it was authorized under the relevant sections of the Enterprise's charter, in the public interest, and consistent with the safety and soundness of the Enterprise or the mortgage finance system. Two commenters recommended enhancements to the final rule that would also create explicit review standards for a new activity. One commenter suggested that a new activity should be subject to review under four standards: (1) any applicable law; (2) the Director's safety and soundness authority; (3) an Enterprise's authorizing statute; and (4) the public interest, and that the final rule should give equal weight to safety and soundness and the public interest. Another commenter recommended that FHFA establish ''a list of questions to evaluate the product or activity[, which] would provide a baseline that would ensure more consistent and objective evaluation of the public interest . . .''

After considering these comments, FHFA is not changing the standards for approval. The standards for approval of a new product are established by statute. These standards are not weighted, as suggested by one commenter, and are considered comprehensively. The Act does not establish standards for approval for a new activity because unlike a new product, a new activity need not be approved by the Director but instead is reviewed to determine whether it is a new product. As noted by commenters, FHFA has the authority to review new activities and new products under any applicable regulation or statute, as part of FHFA's authority to review for safety and soundness and for consistency with an Enterprise's statutory mission. Also, FHFA believes that establishing a list of questions to review a new activity or approve a new product is duplicative of the public interest factors that are to be considered by the Director in determining whether a new activity is a new product and in determining whether to approve a proposed new product. The public interest factors are discussed in more detail in Section D below.

C. New Activity and New Product

Scope of New Activity. FHFA proposed that an ''activity'' is a business line, business practice, offering or service, including a guarantee, a financial instrument, consulting, or marketing, that the Enterprise provides to the market, and defined it as a ''new'' activity if the Enterprise is not engaged in the activity as of the effective date of the final rule or if the Enterprise enhances, alters, or modifies an existing activity. In addition, the Proposed Rule required that a new activity must be described by one or more of the following criteria: (1) requires a new type of resource, type of data, policy, or modification to an existing policy, process, or infrastructure; (2) expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise; (3) involves a new category of borrowers, investors, counterparties, or collateral; (4) substantially impacts the mortgage finance system, the Enterprise's safety and soundness, compliance with the Enterprise's authorizing statute, or the public interest; (5) is a pilot; or (6) results from a pilot. FHFA specifically requested comment on whether the criteria were unambiguous, transparent, and sufficient for identifying a new activity, and if not, how they could be improved.

When responding to FHFA's questions, commenters fell into two distinct groups. Some commenters believed the criteria to be unambiguous and sufficient for identifying a new activity, while other commenters did not. Among the former, one commenter viewed the criteria as ''inclusive of most scenarios that [an Enterprise] could possibly face when adding a new activity or product.'' Another commenter supported the more objective approach to identifying new activities as contained in the Proposed Rule rather than relying solely on exclusions as had been done in the interim final rule. However, other commenters viewed the criteria as overly broad and in need of clarification. One commenter stated that the ''definition of new activity should not be so broad that it includes every minor deviation of an existing program or small process/policy changes.'' Other commenters, including the Enterprises, were concerned that the criteria could capture a large volume of routine activities, including revisions and updates to internal risk management policies and selling and servicing guides. Some commenters recommended that FHFA clarify the criteria by including a materiality standard or re-introducing qualifiers from the interim final rule, such as ''significantly,'' ''*de minimis,*'' or numerical thresholds, to ensure that immaterial increases in risk do not trigger notification under the final rule.

FHFA purposely designed the criteria to be broad because, as recognized by a few commenters, the Agency's review of new activities functions as a screening process for identifying new products. While FHFA is not changing the criteria to narrow their scope, FHFA agrees that certain changes to improve clarity are appropriate and would enhance

Enterprise compliance with the final rule.

FHFA is not adopting the commenters' suggestions to add qualifying language or numerical thresholds to the criteria because the suggestions do not resolve the issues that FHFA identified with the interim final rule. In the Proposed Rule, FHFA sought not only to describe what is a new activity (rather than what is *not* a new activity as was the case in the interim final rule) but also to establish objective criteria that distinguish a new activity from an on-going activity. Furthermore, FHFA believes that it is difficult to measure and consistently apply numerical thresholds or other qualifiers such as ''*de minimis,*'' across all Enterprise business lines, business practices, offerings, and services.

Exclusions. In conjunction with the proposed criteria for identifying a new activity, the Proposed Rule incorporated the statutory exclusions from the review and approval requirements of the Act. The Proposed Rule described the statutory exclusions, which are either the specific activities or substantially similar activities as described in Section I.A above. The specific activities excluded from the scope of the Proposed Rule were: (1) the Enterprises' AUS (Fannie Mae's Desktop Underwriter and Freddie Mac's Loan Product Advisor) and upgrades to the technology, operating system or software to operate an AUS; and (2) any modifications to mortgage terms and conditions or underwriting criteria relating to mortgages that are purchased or guaranteed by an Enterprise but that do not alter the nature of the underlying transaction as residential mortgage financing. The Proposed Rule also made explicit that business practices, transactions, or services performed or conducted solely to facilitate the administration of an Enterprise's internal affairs would be excluded as well. FHFA requested comment on how the exclusion for the AUS should apply to existing technology systems that are related but independent from the AUS, as well as to future technology systems, and whether the exclusions overall should be narrowed or expanded. Comments and questions related to the exclusions for substantially similar activities are addressed in a separate discussion below under the heading ''*Exclusions for Substantially Similar Activities.*''

In responding to the questions about the AUS exclusion and whether the exclusions overall should be expanded, one commenter was supportive of the proposed exclusions, believing them to be appropriate and consistent with the ''need for a rigorous review process that is not unduly time-consuming or stifling.'' Another commenter stated that the exclusion for activities involving the AUS should be narrowed and apply only to the capabilities of the AUS as of the effective date of the final rule. The commenter further argued that ''any new benefit, protection, right, relief, or change to the origination process—as well as activities traditionally associated with the primary mortgage market—should be considered new activities and outside the scope of the proposed exclusion.'' However, several commenters recommended that the exclusions be expanded to include technology systems that are related but independent from an AUS, such as the models and applications that assist an AUS in assessing the risk of a mortgage. One Enterprise asserted that an AUS is not a single technology system but is a collection of interrelated and integrated technology systems that embody the mortgage terms and conditions or underwriting criteria that are published in the Enterprises' respective selling and servicing guides, and therefore should be excluded, as was intended by the statute. The commenters who favored expanding the exclusion believe that subjecting these technology systems to the requirements of this final rule could unduly delay updates that incorporate new types of data or resources, potentially rendering the AUS obsolete over time because the market is moving or shifting faster than an Enterprise can update it through the new activity or new product process, and consequently exposing the Enterprise to increased risk. Two commenters and the Enterprises requested that the exclusions be expanded to name the actual integrated or interrelated technologies, such as Collateral Underwriter and Loan Collateral Advisor, among others. One commenter also suggested that technology innovations that merely enhance ease of access to housing data should also be excluded from the requirements of the final rule.

FHFA has carefully considered the commenters' suggestions for expanding the exclusion related to the AUS and believes it should remain as proposed. In retaining the exclusion as proposed, FHFA is striking a balance between excluding an activity that is part of an Enterprise's core business from prior notice requirements and including an activity that introduces new technology to the mortgage industry that may serve a primary market function. However, FHFA recognizes that some technologies perform functions similar to the AUS because they assist in applying the Enterprise's underwriting criteria and assessing the credit risk of the mortgage and that other technologies mirror the mortgage terms and conditions and underwriting criteria that are reflected in an Enterprise's selling and servicing guide. As a result, FHFA is revising the exclusion for substantially similar activities to include the technologies (other than the AUS) that apply underwriting criteria or mortgage terms and conditions to residential mortgages purchased or guaranteed by the Enterprises so that changes to systems such as Fannie Mae's Collateral Underwriter or Loan Delivery and Freddie Mac's Loan Collateral Advisor or Loan Selling Advisor do not require a notice of new activity. By revising the exclusions for substantially similar activities rather than the exclusions for an Enterprise AUS, FHFA achieves the balance it is seeking. In contrast to activities that fall under the AUS exclusion, an Enterprise must submit advance notice to FHFA before engaging in a substantially similar activity (notice of substantially similar activity). By reviewing a notice of substantially similar activity, the Agency can assess technological enhancements to ensure that they are substantially similar to the AUS or mortgage terms and conditions or underwriting criteria and are not a new activity or a new product.

As discussed previously, some commenters feared that the final rule could capture a large volume of routine activities, including revisions and updates to the Enterprises' internal risk management policies and selling and servicing guides. Conversely, another commenter felt that the public and FHFA should have the opportunity to assess potential changes to an Enterprise's underwriting criteria that would materially impact its credit box or consumer access to credit because the Enterprises ''essentially set the rules for the market.'' Commenters were also concerned that the underwriting and servicing policy changes put in place in response to the COVID–19 pandemic could have been treated as new activities under the Proposed Rule even though the changes did not result in a new product offering to the market. In a related comment, both Enterprises mentioned the significant number of lender letters and bulletins issued that addressed housing issues related to the pandemic, which kept borrowers and renters in their homes and made closings possible under social distancing requirements and shutdowns. Other commenters mentioned new loss mitigation activities

made available during the pandemic that should be explicitly excluded, such as the introduction of the Enterprises' new home retention repayment option that allows borrowers to defer unpaid mortgage payments and turn them into a noninterest-bearing balance due when the mortgage is paid off.

FHFA disagrees that routine activities, updates to the Enterprises' respective selling and servicing guides, or changes to underwriting criteria or mortgage terms and conditions are captured or should be captured under the final rule. In reviewing the comments, FHFA noted that many commenters did not seem to understand the scope of the exclusions, which, in keeping with the Act, are designed to exclude changes to mortgage terms and conditions or underwriting criteria relating to residential mortgages purchased or guaranteed by an Enterprise, such as an Enterprise's core activities involving its Single-Family and Multifamily business lines. For example, changes to an Enterprise's underwriting criteria or servicing and loss mitigation policies in response to the COVID–19 pandemic would not require an Enterprise to submit a notice of new activity to FHFA. However, several commenters seemed to believe that such changes, though specifically excluded by the Act, could and would be considered a new activity and require the Enterprise to submit a notice of new activity. FHFA believes the Act and the Proposed Rule clearly exclude activities that involve any modification to the mortgage terms and conditions or underwriting criteria for residential mortgage financing, such as those activities that resulted in temporary loss mitigation policies or underwriting flexibilities or restrictions in response to the pandemic. However, given that commenters had difficulty understanding the exclusions, FHFA is making changes to enhance clarity but retain the scope of the exclusions as proposed.

The Enterprises requested that the exclusions in the final rule be expanded to exclude activities under the Duty to Serve Regulation (12 CFR part 1282, subpart C). The Enterprises argued that those activities have already undergone a review by FHFA and were made available for public notice and comment, and therefore it would be a duplicative regulatory burden to make them subject to the final rule. The Enterprises also requested that the exclusion for any Enterprise business practice performed solely to facilitate the administration of an Enterprise's internal affairs be revised to make clear that the activities performed to mitigate their risk on mortgages that they purchase or guarantee are also excluded from the definition of a new activity.

FHFA is not adopting the Enterprises' requested changes to the exclusions in the final rule. An FHFA non-objection to an Enterprise's Duty to Serve plan—or an Equitable Housing Finance Plan, for that matter—applies only to the plan itself and not to the underlying activities. Therefore, it is not a duplicative regulatory burden but rather completely appropriate for such activities to be subject to the final rule if they meet one or more of the new activity criteria. Regarding the exclusion for business practices internal to the Enterprises, FHFA is not revising this exclusion because, as proposed, the exclusion already captures those risk mitigation activities that are internal to an Enterprise such as those mentioned by Freddie Mac in its comment letter (''establishing internal controls, updating obsolete systems and technologies, and improving efficiencies related to analyzing, processing, and documenting internal information''). However, if an Enterprise's risk mitigation activities are ultimately provided to the market in the form of an offering or service, they are no longer exclusively internal to the Enterprise and will be subject to the final rule if the activity meets one or more of the new activity criteria and is otherwise not excluded.

Exclusions for Substantially Similar Activities. As mentioned previously, FHFA proposed an exclusion for substantially similar activities as described in Section I.A. above. Several commenters found this exclusion confusing, with one stating that the Proposed Rule ''provides no clarity or definition as to what 'substantially similar' means for purposes of [the] exclusion.'' Another commenter recommended the removal of the provision in the final rule that stated that if an activity met one or more of the new activity criteria, it could not be considered substantially similar. A few commenters requested that the final rule clarify that the exclusion for an activity that is substantially similar to an approved new product is available to ''either'' Enterprise and not only to the Enterprise that did not obtain the original new product approval. Lastly, one Enterprise suggested that existing and future technology systems that are integral to an Enterprise's mortgage terms, conditions, and underwriting and have functions similar to the AUS could be considered ''substantially similar'' to the AUS system or to modifications to mortgage terms, conditions and underwriting criteria.

In response to these comments, FHFA is changing this section in the final rule to make it clear that this exclusion applies to ''either'' Enterprise. FHFA is also revising the final rule to adjust and clarify the scope of the exclusion in two principal ways. First, the final rule distinguishes the criteria used for determining whether an activity is substantially similar to activities that are otherwise excluded from the review and approval requirements under the Safety and Soundness Act (*i.e.,* changes to the AUS, mortgage terms and conditions, and underwriting criteria) from the criteria used for determining whether an activity is substantially similar to a new product that an Enterprise is authorized to offer to the market. The criteria for determining whether an activity is substantially similar to a new product are more rigorous than for determining whether an activity is substantially similar to an excluded activity. For example, activities like modifying the Enterprises' loan delivery systems or other technology systems to apply updated Qualified Mortgage criteria are not likely to merit public notice and comment because—like updates to the statutorily excluded AUS—they tend to be routine activities. However, under the Proposed Rule, this type of update to a technology system would require a notice of new activity. Similarly, simple changes to the risk scores provided by Collateral Underwriter or Loan Collateral Advisor may not satisfy the criteria for substantially similar and could require a notice of new activity each time a modification is made. Treating these types of modifications as new activities would be unduly burdensome on the Agency and on the Enterprises. To mitigate this burden, FHFA is revising the final rule so that the Director may determine that any technology that applies mortgage terms and conditions or underwriting criteria relating to residential mortgages that are purchased or guaranteed by an Enterprise or any modifications to those technologies (*e.g.,* modifications to Collateral Underwriter and Loan Collateral Advisor) are substantially similar to the statutorily excluded AUS, mortgage terms and conditions, or underwriting criteria.

Second, with respect to activities that are substantially similar to new products, FHFA recognizes that describing what are *not* substantially similar activities for purposes of the exclusion is potentially confusing and is revising this section to affirmatively describe what *are* substantially similar activities. Additionally, FHFA is

slightly expanding the scope of the exclusion in the final rule in a manner that is consistent with the goal of screening to confirm that the activity is not a new activity. For example, where the Proposed Rule provided that an activity would not be substantially similar to an approved new product if the activity required a new resource, type of data, policy, process, or infrastructure, the final rule provides that the Director may determine that an activity is substantially similar to an approved new product if the activity requires the same *or similar* resource, type of data, policy, process, or infrastructure as the approved new product. These changes should provide the clarity that commenters and the Enterprises are seeking for this exclusion.

Treatment of Pilots. As part of the new activity description and exclusions, FHFA proposed to include activities that are pilots or that result from a pilot as among the criteria that would identify a new activity. Under the Proposed Rule, a pilot was defined as an activity that had a defined term and scope for the purposes of understanding the viability of a new offering, and FHFA recognized that pilots are referred to in different ways, such as a testing initiative, test and learn, or temporary authorization.

FHFA received a wide range of comments about including pilots as one of the criteria for identifying a new activity. Several commenters supported their explicit inclusion in the scope of a new activity to help minimize ''pilot creep.'' Some commenters suggested that the final rule should have formal constraints on the duration and volume for pilots that would require the Enterprise to submit a new notice when the pilot reached those limits. Other commenters and the Enterprises took the opposite position and stated that including pilots in the scope of a new activity is too broad and would stifle innovation. One commenter argued that the word ''pilot'' should be removed from the definition of a new activity ''. . . as the word has never been clearly defined or consistently applied throughout the industry.'' The same commenter also suggested that pilots should be excluded from the new activity description. Finally, several commenters stressed that there is a lack of transparency and inclusivity for pilots, giving some market participants an advantage over others, which they believe FHFA should address through the final rule.

FHFA disagrees with the commenters who suggested that pilots should be excluded from the scope of a new activity. As noted by several other commenters, a pilot is how an Enterprise typically determines the viability of a future offering. In general, Enterprise products and activities have significant effects on the market and market participants. Regardless of the size of a pilot, it could have a significant effect on the public interest. Therefore, it is critical for FHFA to review pilots as new activities to determine whether they are indeed new products that merit public notice and comment.

FHFA agrees with commenters that there should be process requirements for reviewing pilots beyond what was proposed, and has added language to the final rule that requires an Enterprise to submit a notice of new activity both when a pilot is initiated and when modifications to the volume and duration of the pilot are made after it commences. FHFA recognizes that pilots can extend for lengthy periods of time or change form as a natural consequence of conducting exploratory business, which is why the notice of new activity, as proposed, required the Enterprise to establish the parameters, such as the duration and volume of the pilot. FHFA also believes that requiring a subsequent notice of new activity for a pilot when there are changes to the duration and volume would help manage ''pilot creep'' and facilitate a determination of whether the activity is a new product that merits public notice and comment.

While several commenters recommended that the final rule should require an Enterprise to be inclusive when selecting participants for a pilot, FHFA believes that such requirements are not within the scope of this final rule and are already in place in the broader regulatory framework governing an Enterprise's activities. FHFA's Minority and Women Inclusion and Diversity Regulation at 12 CFR 1223.2 requires the Enterprises ''to promote diversity and ensure . . . the inclusion and utilization of minorities, women, individuals with disabilities, and minority—, women—, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services of any kind.'' That Regulation governs not just an Enterprise's new activities as described in the final rule, but *all* Enterprise activities.

D. Public Interest Factors

FHFA proposed eight factors that the Director may consider when determining whether a new product is in the public interest. These are the same factors on which the Director would seek public comment to inform the decision as to whether to approve or disapprove a new product. The public interest factors fall into three broad categories: (1) the impact of the new product on the Enterprise's public mission; (2) the impact of the new product in terms of risk to the mortgage finance or financial system; and (3) the impact of the new product on the competitiveness of the market. In addition, the Director retained the discretion to seek public comment on and consider any other public interest factors determined to be appropriate to consider during the approval process.

More than half of the commenters, including both Enterprises, provided comments on factors that FHFA should or should not include in the consideration of whether a new product is in the public interest. Several commenters suggested additional factors that, if incorporated, would inform the degree to which the new product would promote competition in the marketplace, or to the contrary would result in less competition. One commenter suggested that FHFA include a factor focused on the degree to which a new product would enable the Enterprise to ''compete against market participants that they effectively regulate.'' Several commenters requested that the public interest factors make explicit reference to the degree to which the new product would have a disruptive or inequitable impact on different types or sizes of lenders. While most commenters sought the inclusion of factors that would contribute to an evaluation of whether the new product would harm competition, other commenters (including the Enterprises) viewed the public interest factors as overly protective of competition, with one Enterprise arguing that the public interest analysis ''should focus on protecting competition, not competitors.'' These commenters requested the removal of the public interest factor that prompts an evaluation of the degree to which the new product is being or could be supplied by other market participants.

FHFA has considered the feedback from commenters and has determined that the public interest factors, as proposed, enable FHFA to conduct a holistic evaluation of the impact of a new product on competition. There are numerous ways that a new product could help or hinder competition. The Proposed Rule specifically enumerated two such factors for evaluation—the degree to which the new product would overcome natural market barriers or inefficiencies and the degree to which the new product could be supplied by

other market participants. These factors are in addition to a catchall provision that prompts the evaluation of the degree to which the new product would promote competition in the marketplace, or to the contrary would result in less competition. Together, these factors will enable FHFA to seek public comment and form a holistic and balanced view of the impact of the new product on competition.

In addition to the comments related to competition, commenters suggested a variety of public interest factors that should be included in FHFA's evaluation. For example, one commenter wanted the public interest factors to prompt an evaluation of the impact of the new product on housing costs for low- and moderate-income borrowers, while another commenter indicated that the public interest factors should include the degree to which the new product would aid in addressing natural disasters. FHFA has considered these comments and determined that the concerns are adequately addressed by specific public interest factors (such as the degree to which the new product serves underserved markets and housing goals) or through the discretion retained by the Director to seek public comment and evaluate any other appropriate factor. The discretion retained by the Director provides an avenue to address considerations that may not be relevant for all new products at all times, such as the degree to which the new product would aid in addressing natural disasters.

E. Enterprise Confidentiality

Confidential Treatment of Enterprise Submissions; Public notices. FHFA did not propose explicit protections for confidential information provided to FHFA by an Enterprise in connection with a notice of new activity. Several commenters, including both Enterprises, recommended that the final rule include such protections. Reasons cited included the need to avoid discouraging innovation, the need to protect an Enterprise's ability to comply with contractual obligations to third parties, and the need to protect an Enterprise from competitive harm. One commenter noted that ''this is one of the trickiest elements of the entire Proposed Rule,'' acknowledging that it is ''challenging to provide sufficient details to elicit meaningful public commentary without requiring an Enterprise to disclose key business details'' which might ''discourage future innovations.'' The Enterprises also commented that the treatment of confidential information in the Proposed Rule was inconsistent with FHFA's treatment of confidential information in other contexts, such as its rules on application of the Freedom of Information Act (FOIA) (5 U.S.C. 552; 12 CFR part 1202) and Enterprise Duty to Serve (12 CFR 1282.32(g)(2)). The Enterprises noted that, at a minimum, FHFA should provide the same protections for information contained in a new activity or new product submission that FHFA provides for many other communications between FHFA and its regulated entities.

FHFA has considered the comments and determined that no changes to the treatment of confidential information are warranted for the final rule. FHFA's treatment of confidential information in the final rule is appropriate to the context and in line with the intent of the underlying statute.

An Enterprise may request that information provided to FHFA in any context, including as part of a new activity or new product submission, be afforded protection from public disclosure under FOIA and FHFA's implementing regulation, 12 CFR part 1202. The fact that the final rule does not mention FOIA does not mean protections provided to an Enterprise under FOIA are unavailable. However, FOIA protections are triggered only when a member of the public requests that FHFA disclose information that an Enterprise has requested be kept confidential. As a general matter, FOIA does not limit or preclude FHFA from disclosing confidential, proprietary, or other non-public information at its own initiative. FHFA's independent decision to disclose non-public information in connection with the publication of a notice soliciting public comments on a proposed Enterprise new product is governed by FHFA's Availability of Non-public Information Regulation (12 CFR part 1214).

FHFA's Availability of Non-public Information Regulation grants the Director broad discretion to authorize the disclosure of non-public information. The Director's discretion is informed by statutory duties under the Safety and Soundness Act, including duties to ensure that the Enterprises operate in a safe and sound manner, that the operations and activities of the Enterprises foster liquid, efficient, competitive, and resilient housing finance markets, and that the activities of the Enterprises and the manner in which they operate are consistent with the public interest. The Director's exercise of discretion is also subject to privacy and other laws and regulations that may limit certain disclosures. Within this complex framework, FHFA must always be mindful of the need to protect sensitive information from public disclosure. Where the Director exercises discretion to authorize disclosure of non-public information, the Director, in view of the statutory and regulatory framework that governs such disclosure, balances the need for disclosure against other statutory responsibilities that may be facilitated by protecting sensitive information.

Striking the appropriate balance is context specific. Where the statutory or regulatory framework requires or encourages FHFA to publish the regulatory submissions prepared by an Enterprise or a Federal Home Loan Bank, FHFA's practice has been to omit confidential information from those publications (*e.g.,* Duty to Serve Underserved Markets Plans). In some cases—for example, under the Enterprise Resolution Planning Regulation (12 CFR part 1242) and the Federal Home Loan Bank Housing Goals Regulation (12 CFR part 1281)—this practice is facilitated by requesting that the regulated entity segregate confidential and non-confidential information into separate documents so that the non-confidential submissions can be published in their entirety.

The final rule strikes the appropriate balance between the need for disclosure and protecting sensitive information. In recognition of the fact that a substantial portion of an Enterprise's new product submission is likely to contain information that an Enterprise would prefer to remain confidential, FHFA does not expect to publish the submission or supporting documentation in whole. Instead, FHFA will review the submissions and, based on the information it contains, prepare a notice that provides the public with enough information to comment on the extent to which the proposed new product would serve the public interest. The public notice may include information that an Enterprise would prefer to be kept confidential. However, this approach is consistent with the statutory intent that FHFA disclose information to the public about a potential Enterprise new product prior to it being offered to the market. But for the statute, this information customarily would not be made public. The Director would make any such disclosures in view of the regulatory framework that governs FHFA's disclosure of non-public information, the statutory intent underpinning the final rule, and the Director's other statutory duties.

F. FHFA Transparency and Reporting

While some commenters expressed the need to protect the confidentiality of Enterprise submissions, most commenters sought greater transparency

into Enterprise new activities. Commenters expressed various perspectives on how transparency could be enhanced. Several commenters suggested that FHFA should report on Enterprise new activities on a monthly, quarterly, or annual basis. Commenters' suggestions on the content of that reporting can be grouped into two categories—transparency about the new activities themselves and transparency into FHFA's decision-making.

With respect to the new activities, one commenter noted that the reporting should identify the Enterprise that submitted the notice and describe the basic parameters of a proposed activity, but not be so specific as to disclose operational details that might reveal confidential aspects of the work under development ''that are not ready for public consumption.'' In contrast, another commenter seemed to suggest that reporting on a new activity should be ongoing and include a list of all new activities and the market participants involved. Along the same lines, another commenter recommended that FHFA conduct an *ex post* evaluation of each new product after six months and that the resulting analysis should be made publicly available.

Several commenters also requested that FHFA publish a summary of its determinations on Enterprise new activity submissions. One commenter noted that this disclosure could provide some insight into Enterprise reaction to market trends and would give stakeholders a more informed ''view of the dedication of Enterprise time and resources to innovation and a clearer picture of the types of activities that FHFA will and will not deem to be permissible for an Enterprise[ ] to pursue.'' Another commenter remarked that in the absence of insight into why a proposed product was denied approval, the Enterprises and other market participants might refrain from investing human and financial resources into developing Enterprise new products.

FHFA agrees with the commenters suggestions that the final rule should have a provision that requires Agency reporting on the Enterprises' new activity and new product submissions and FHFA's decisions. FHFA anticipates leveraging existing reports, such as the Annual Report to Congress or annual Performance and Accountability Report, to include a section that identifies new activity and new product submissions by Enterprise, describes the basic parameters of proposed activities or products, and summarizes FHFA's new product determinations, approvals, and disapprovals and the basis for those decisions. Reporting under this new provision would omit confidential and proprietary information not already published in connection with the public notice for a new product since the report is for information only and the public would not be asked to comment.

III. Section-by-Section Analysis of the Final Rule

A. Purpose and Authority; Definitions—§§ 1253.1 and 1253.2

Section 1253.1 of the final rule sets out the purpose and authority of the rule, which is to implement the Director's authority under section 1321 of the Safety and Soundness Act to review and approve new Enterprise products before they are offered to the market. Section 1253.2 of the final rule defines key terms used in the regulation. Of particular significance, the final rule defines ''activity'' as a business line, business practice, offering, or service, including a guarantee, a financial instrument, consulting or marketing, that the Enterprise provides to the market either on a standalone basis or as part of a business line, business practice, offering, or service. While this definition was implied by the Proposed Rule, it was not stated explicitly. In line with the Proposed Rule, § 1253.2 of the final rule also defines ''pilot'' as an activity that has a limited term and scope for purposes of evaluating the viability of the activity, regardless of the name assigned to the activity. The word ''limited'' has been added to enhance clarity. ''New activity'' and ''new product'' have the meanings assigned to them under §§ 1253.3 and 1253.4 of the final rule, respectively.

B. New Activity Description and Exclusions—§ 1253.3

New Activities. Section 1253.3 of the final rule describes the criteria for identifying a new activity and describes the activities which are excluded from the review and approval requirements by statute. Because the final rule includes an explicit definition for ''activity,'' the structure of this section has changed from the Proposed Rule to reflect that addition and to improve clarity. A threshold criterion for distinguishing an ongoing activity from a new activity is timing. Under § 1253.3(a)(1) of the final rule, an activity is a ''new activity'' if it is not engaged in by the Enterprise on or before the effective date of the regulation. However, § 1253.3(a)(2) of the final rule provides that if an Enterprise does engage in an activity on or before the effective date of the regulation, but the Enterprise enhances, alters, or modifies the activity after the effective date of the regulation so as to: (1) require a new resource, type of data, policy (or modification to an existing policy), process, or infrastructure; (2) expand the scope or increase the level of credit risk, market risk, or operational risk to the Enterprise; or (3) involve a new category of borrower, investor, counterparty, or collateral, then the resultant activity would be considered a ''new activity.'' This approach simplifies the criteria for determining whether an activity is a new activity that was presented in the Proposed Rule without altering the scope of activities captured.

Section 1253.3(a)(3) and (4) of the final rule include two additional categories of new activities that are intended to comprehensively capture an Enterprise's activities related to pilots. Section 1253.3(a)(3) of the final rule classifies as a new activity: (1) any pilot engaged in by an Enterprise after the effective date of the regulation; and (2) any modification to the volume or duration of a pilot that occurs after the effective date of the regulation, regardless of whether the Enterprise initially engaged in the pilot before or after the effective date of the regulation. Section 1253.3(a)(4) of the final rule captures the transition from a pilot into an ongoing activity, regardless of whether the Enterprise initially engaged in the pilot before or after the effective date of the regulation. While an Enterprise's activities related to pilots are likely to also fall within the scope of § 1253.3(a)(1) or (2) of the final rule, including targeted provisions on pilots in the final rule emphasizes FHFA's commitment to closely scrutinize them. For this reason, the final rule expands the scope of pilots captured as new activities to include modifications to the volume or duration of a pilot. Unless a pilot or an activity resulting from a pilot falls into one of the exclusions set forth at § 1253.3(b) of the final rule, an Enterprise must submit a notice of new activity or a request for prior approval as a new product, as appropriate.

The final rule does not reflect one element of the new activity description from the Proposed Rule. Section 1253.3(a)(3)(iv) of the Proposed Rule provided that an activity could be a new activity if it would substantially impact the mortgage finance system, the Enterprise's safety and soundness, compliance with the Enterprise's authorizing statute, or the public interest. On further reflection, FHFA has determined that it would be unreasonable to hold the Enterprises to account for failing to file a notice of new

activity based on the subjective determinations required by this provision.

Exclusions. As noted above, the following activities are excluded from the review and approval requirements under the Safety and Soundness Act: (1) the Enterprises' AUS, and any upgrades to the technology, operating system, or software to operate the underwriting system; (2) any modifications to mortgage terms and conditions or underwriting criteria relating to mortgages that are purchased or guaranteed by an Enterprise but that do not alter the nature of the underlying transaction as residential mortgage financing; and (3) substantially similar activities, as defined in Section I.A above. *See* section 1321(e) of the Safety and Soundness Act (12 U.S.C. 4541(e)). Section 1253.3(b) of the final rule incorporates these statutory exclusions and makes clear that activities conducted to facilitate the administration of an Enterprise's internal affairs but which are not provided to the market are also excluded from the review and approval requirements of section 1321 of the Safety and Soundness Act.

The final rule clarifies the scope of the exclusions related to the AUS and mortgage terms and conditions or underwriting criteria but does not modify the scope of the exclusions, which remain as proposed. To further enhance clarity of the exclusions, the final rule interprets ''upgrades'' to an Enterprises' AUS and ''modifications'' to mortgage terms and conditions or underwriting criteria in a way that ensures that these types of changes are not inadvertently captured by the new activity description. Accordingly, a new activity does not include any enhancement, alteration, or modification to the technology, operating system, or software to operate the AUS or to mortgage terms and conditions or underwriting criteria that does not alter the nature of the underlying transaction as residential mortgage financing is excluded from the new activity description, even if that change: (1) requires a new resource, type of data, policy (or modification to an existing policy), process, or infrastructure; (2) expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise; or (3) involves a new category of borrower, investor, counterparty, or collateral.

The final rule also revises the description of substantially similar activities in a manner that makes the exclusion easier to understand and more closely aligned with the statute, including with respect to the treatment of technology systems that apply or mirror the Enterprises' mortgage terms and conditions or underwriting criteria. A more detailed discussion of these revisions is found in Section G below.

C. New Product Determination—§ 1253.4

Under § 1253.4(a) of the final rule, a new activity is a new product if the Director determines that the new activity merits public notice and comment about whether the proposed activity serves the public interest. This reflects a simplified approach from the Proposed Rule under which the Director would make the determination whether the new activity is a new product based on whether the new activity merits public notice and comment on three criteria: (1) compliance with specific provisions of the Enterprises' respective authorizing statutes; (2) the safety and soundness of the Enterprise or the mortgage finance system; and (3) the public interest.

The revisions to the new product determination criteria have been made for two reasons. First, FHFA is unlikely to seek public comment on redundant topics. FHFA proposed eight factors that the Director may consider when determining whether a new product is in the public interest. These are the same factors on which the Director would seek public comment to inform the decision as to whether approval of a new product would be in the public interest. To a large extent, the determination criteria in § 1253.4(a) of the Proposed Rule overlapped with the public interest factors in proposed § 1253.4(b). For example, one of the public interest factors examines the degree to which the proposed new product would advance the purposes of the Enterprise under its authorizing statute, which is similar to the determination criterion in § 1253.4(a) of the Proposed Rule about the new activity's compliance with specific provisions of the Enterprise's authorizing statute. Another public interest factor examines the degree to which the proposed new product might raise or mitigate risks to the mortgage finance or financial system, which is similar to the criterion in § 1253.4(a) of the Proposed Rule about the safety and soundness of the Enterprise or the mortgage finance system. While two of determination criteria have been deleted, the public interest factors remain unchanged from the Proposed Rule, and the Director retains the discretion to include other factors deemed appropriate to consider during the approval process. Second, one Enterprise raised a concern that seeking public input on the determination criteria in the Proposed Rule would likely require the public disclosure of confidential or privileged information. FHFA believes that it can adequately assess compliance with specific provisions of the Enterprises' respective authorizing statutes, as well as the safety and soundness of the Enterprise or the mortgage finance system, without seeking public input beyond what would be sought through the public interest factors.

D. Notice of New Activity—§ 1253.5

Section 1253.5 of the final rule establishes the procedural framework for Enterprise submission and FHFA review of a notice of new activity. Before commencing any new activity, an Enterprise must submit to FHFA a written notice, the content of which is described in § 1253.9 of the final rule. Consistent with the Proposed Rule, an Enterprise includes any of its affiliates (*see* 12 U.S.C. 4502; 12 CFR 1201.1) and if the new activity is to be offered by an affiliate, either the Enterprise or its affiliate may submit the required notice. In contrast to the Proposed Rule and in response to comments, the final rule explicitly states that an Enterprise may request prior consultation with FHFA about whether a notice of new activity is required. Circumstances which may merit a consultation could include when the Enterprise is uncertain about whether a notice of new activity is required.

A notice of new activity will not be considered complete and received for processing until the information required by § 1253.9 of the final rule has been submitted, including any follow-up information required by FHFA. Section 1253.5(c) of the final rule provides that nothing in the rule limits or restricts FHFA from reviewing the notice of new activity under any other applicable regulation or statute, as part of FHFA's authority to review for safety and soundness and for consistency with an Enterprise's statutory mission. For example, if a proposed new activity necessitated a review for compliance with the Uniform Mortgage-Backed Securities Regulation (12 CFR part 1248), FHFA's receipt of information necessary for that review may be part of FHFA's determination that the notice of new activity is complete and has been received.

The final rule provides that an Enterprise may not commence a new activity unless the Director makes a written determination that the new activity is not a new product within 15 days, or the 15 days pass and no

determination is made. If the Director determines that the new activity is a new product, the Enterprise must elect to submit a request for prior approval of a new product and await approval of the new product under § 1253.6 of the final rule or it must discontinue its plan to offer the new product to the market. Providing this optionality for the Enterprises reflects a change from the Proposed Rule in response to the Enterprises' request to be permitted to decide whether to continue to pursue the offering following a new product determination. If FHFA issues a determination that the new activity is not a new product, or the 15 days pass without any determination, the Enterprise may begin the new activity, subject to such terms, conditions, or limitations as the Director may establish.

E. Request for Prior Approval of a New Product; Public Notice; Standards for Approval—§ 1253.6

The final rule introduces the concept of a request for prior approval of a new product that is distinct from a notice of new activity. This change responds to commenters' concerns that the Proposed Rule did not provide this distinction and accommodates the changes made to § 1253.5 of the final rule that permit an Enterprise to decide whether it still wants to pursue an offering following a new product determination. Section 1253.6 of the final rule establishes the procedural framework for Enterprise submission and FHFA review of a request for prior approval of a new product. An Enterprise must submit a request for prior approval of a new product to FHFA before offering a new product to the market. However, since a determination by the Director under § 1253.4 of the final rule is required for a new activity to be classified as a new product, an Enterprise may only submit a request for prior approval of a new product if the Director has made such a determination. The Director may make a determination that a new activity is a new product at the conclusion of the Agency's review of a new activity or at the conclusion of an Enterprise's voluntary consultation with FHFA.

A request for prior approval of a new product will not be considered complete and received for processing until the information required by § 1253.9 of the final rule has been submitted, including any additional information requested by FHFA. In response to commenters' concerns that FHFA has an unlimited amount of time to prepare a public notice, the final rule makes clear that once FHFA makes the determination that the request for prior approval is ''received,'' FHFA will publish a public notice soliciting comments on the proposed new product without delay. FHFA will include in that public notice enough information from the request for prior approval of a new product to sufficiently describe the new product so that the public can provide meaningful comment. The final rule clarifies that the public notice will be published on FHFA's website and in the **Federal Register**. In response to public comments that requested FHFA to maximize time for public comment, the statutory 30-day comment period will commence on the date that the notice is published in the **Federal Register**, which is expected to be later than the date on which the notice is published on FHFA's website. The public notice will provide instructions for submission of public comments. As is the practice with other requests for information and proposed rules, comments submitted by the public on a new product will be made public and posted on FHFA's website.

In determining whether to approve a new product, the Director will consider all public comments received by the closing date of the comment period. The final rule incorporates the Safety and Soundness Act's approval requirements by providing that the Director may approve the new product if the Director determines that the new product: (1) in the case of Fannie Mae, is authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or (2) in the case of Freddie Mac, is authorized under 12 U.S.C. 1454(a)(1), (4), or (5); (3) is in the public interest; and (4) is consistent with the safety and soundness of the Enterprise or the mortgage finance system.

In accordance with the statutory timelines, the Director will make a determination on the new product no later than 30 days after the close of the public comment period. If no determination is made within that timeframe, the Enterprise may offer the new product. As with a new activity, a new product may be subject to any terms, conditions, or limitations as the Director may establish. Also, as with a new activity, the Director may review for safety and soundness or consistency with the Enterprise's statutory mission at any time; exercise of that authority is not constrained by any time limit provided for in the Act or reflected in the final rule.

F. Temporary Approval of a New Product—§ 1253.7

Section 1253.7 of the final rule incorporates the statutory provision empowering the Director to make a new product temporarily available to the market without first seeking public comment. Section 1321(c) of the Safety and Soundness Act (12 U.S.C. 4541(c)) authorizes the Director to grant temporary approval of a new product if the Director finds ''that the existence of exigent circumstances makes [the delay associated with seeking public comment] contrary to the public interest.'' Section 1321(c)(4)(C) of the Act (12 U.S.C. 4541(c)(4)(C)). Under the final rule, an Enterprise may request temporary approval of a new product, or FHFA may act on its own initiative. The Director may impose terms, conditions, or limitations on the temporary approval, and upon the granting of a temporary approval for a new product, FHFA will begin the process for permanent decision on the proposed new product in accordance with § 1253.6 of the final rule, including issuing a notice for public comment without delay. This section remains unchanged from the Proposed Rule, except for conforming paragraph numbering.

G. Substantially Similar Activities—§ 1253.8

As noted above, ''substantially similar activities'' are excluded from the review and approval requirements of the Safety and Soundness Act. Section 1253.8 of the final rule establishes the procedural framework for an Enterprise to offer a substantially similar activity. An Enterprise must provide written notice to FHFA of its intent to offer the substantially similar activity at least 15 days prior to offering the activity to the market. In contrast to the other statutory exclusions which do not require notice (*e.g.,* the AUS and enhancements, alterations, or modifications to mortgage terms and conditions or underwriting criteria), advance notice to FHFA is required for any substantially similar activity so that FHFA may exercise its regulatory and supervisory responsibilities to ensure that the activity qualifies for the exclusion.

The notice of substantially similar activity required under § 1253.8 of the final rule is distinct from a notice of new activity. Section 1253.8(d) of the final rule provides that a notice of substantially similar activity must include the name and a complete and specific description of the activity, as well as an explanation of why the Enterprise believes the activity qualifies as a substantially similar activity under § 1253.8(b) of the final rule. However, if the Director determines that the activity is not a substantially similar activity, the Enterprise must submit a notice of new activity under § 1253.5 of the final

rule or a request for prior approval of a new product under § 1253.6 of the final rule and may not proceed with the activity until the requirements of those sections, as applicable, have been satisfied.

The final rule revises the description of substantially similar activities in a manner that makes the exclusion easier to understand and aligns more closely with the statute, including with respect to the treatment of technology systems that are related but independent of an Enterprise's AUS. The final rule distinguishes the criteria used for determining whether an activity is substantially similar to activities that are otherwise excluded from the review and approval requirements under the Safety and Soundness Act (*e.g.,* the AUS) from the criteria used for determining whether an activity is substantially similar to a new product that an Enterprise is authorized to offer to the market. The final rule also clarifies the criteria related to the latter category of substantially similar activities. Accordingly, under § 1253.8(b) of the final rule, the Director may determine that an activity is substantially similar to: (1) the AUS, including any enhancement, alteration, or modification to the technology, operating system, or software to operate the AUS; or (2) any enhancement, alteration, or modification to mortgage terms and conditions or underwriting criteria relating to residential mortgages that are purchased or guaranteed by an Enterprise if the activity is a technological implementation of mortgage terms and conditions or underwriting criteria relating to residential mortgages that are purchased or guaranteed by an Enterprise. Under § 1253.8(c) of the final rule, the Director may determine that an activity is substantially similar to a new product that the Director has approved for either Enterprise or that is permissible for either Enterprise to offer because the statutory timeframe lapsed without the Director rendering a decision on a request for prior approval of a new product, if the activity: (1) requires the same or a similar resource, type of data, policy, process, and infrastructure; (2) entails the same or similar levels of credit risk, market risk, and operational risk to the Enterprise; and (3) involves the same or a similar category of borrower, investor, counterparty, and collateral. In contrast, the Proposed Rule used a single set of negative criteria to identify which (if any) activities would qualify as substantially similar. The Proposed Rule also indicated that the exclusion for activities that were substantially similar to approved new products was available only to the Enterprise that did not receive approval for the original product, a result which is inconsistent with the provisions of the Act.

H. New Activity and New Product Submission Requirements—§ 1253.9

In response to comments regarding the burdensome submission process, § 1253.9 of the final rule introduces a two-step process for an Enterprise to submit information to FHFA with respect to a potential new product and makes minor adjustments to the required content. The scope of the information required for a notice of new activity is set out in § 1253.9(a) of the final rule. These streamlined information requirements include the five requirements from the Proposed Rule that are most critical to enable FHFA to assess the impact, risks, and benefits of a new activity and determine whether the new activity is a new product. If the Director determines that the new activity is a new product (following the review of a notice of new activity or following an Enterprise's voluntary consultation with FHFA), and the Enterprise elects to proceed with a request for prior approval of a new product, then the Enterprise must provide the additional information set out in § 1253.9(b) of the final rule. Those information requirements are substantially more detailed than what is required in connection with a notice of new activity, to ensure that FHFA can provide the public with sufficient information to review and meaningfully comment on the proposed new product and that the Director has the information required to inform any determination under the statutory standards for approval of a new product. The final rule removes one element of required content from the Proposed Rule—an Enterprise would not be required to indicate its view as to whether a new activity is a new product since the request for prior approval of a new product would only occur after the Director made such a determination.

I. Public Disclosure—§ 1253.10

Section 1253.10 of the final rule provides a mechanism for FHFA to enhance the transparency of its decision-making on new product determinations, approvals, and disapprovals. The provision commits FHFA to publish information related to the Director's determinations on new activity and new product submissions within a reasonable time period after the end of the calendar year during which the Enterprises filed such submissions. Any reporting by FHFA under this provision would not disclose confidential or proprietary information provided to FHFA by an Enterprise.

J. Preservation of Authority—§ 1253.11

The content of section 1253.11of the final rule is unchanged from § 1253.10(a) of the Proposed Rule, but has been reformatted in the final rule. Section 1253.11 of the final rule confirms that the Director's exercise of authority to review new Enterprise activities and products under section 1321 of the Safety and Soundness Act in no way restricts any other authority of the Director over new and existing Enterprise activities or products, including the authority of the Director to review new and existing activities or products for safety and soundness or consistency with the statutory mission of the Enterprise. *See* section 1321(f) of the Safety and Soundness Act (12 U.S.C. 4541(f)). Under this authority, for example, the Director could find that an ongoing activity should be subject to certain conditions or terms.

Section 1253.10 (b) of the Proposed Rule, which as proposed set forth the actions that FHFA may take if an Enterprise fails to comply with the provisions of the rule, has been deleted from the final rule. FHFA has determined that it would be redundant to restate authorities contained elsewhere in the applicable legal and regulatory framework.

IV. Regulatory Analyses

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the Agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act, and FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the regulation only applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

B. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of

Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for Paperwork Reduction Act review.

C. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 12 CFR Part 1253

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

Authority and Issuance

■ For the reasons stated in the preamble, under the authority of 12 U.S.C. 4526 and 12 U.S.C. 4541, FHFA amends Chapter XII of Title 12 of the Code of Federal Regulations by revising part 1253 to read as follows:

PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

Sec.

Authority: 12 U.S.C. 4511; 12 U.S.C. 4513; 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 (12 U.S.C. 4541), as amended (Safety and Soundness Act).

§ 1253.2 Definitions.

For purposes of this part:

Activity means a business line, business practice, offering, or service, including a guarantee, a financial instrument, consulting or marketing, that the Enterprise provides to the market either on a standalone basis or as part of a business line, business practice, offering, or service.

Authorizing statute means the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, as applicable.

Credit risk is the potential that a borrower or counterparty will fail to meet its obligations in accordance with agreed terms. Credit risk includes the decline in measured quality of a credit exposure that might result in increased capital costs, provisioning expenses, or a reduction in economic return.

Days means calendar days.

Market risk means the risk that the market value, or estimated fair value if the market value is not available, of an Enterprise's portfolio will decline as a result of changes in interest rates, foreign exchange rates, or equity or commodity prices.

New activity has the meaning provided in § 1253.3.

New product has the meaning provided in § 1253.4.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people, or systems, or from external events, including all direct and indirect economic losses related to legal liability. Operational risk includes reputational risk, which is the potential for substantial negative publicity regarding an Enterprise's business practices.

Pilot means an activity that has a limited term and scope for purposes of evaluating the viability of the activity. A pilot may also be referred to as a testing initiative, test and learn, temporary authorization, or by other names.

§ 1253.3 New activity description and exclusions.

(a) A new activity is any of the following if not engaged in by the Enterprise on or before February 27, 2023:

(1) An activity;

(2) An enhancement, alteration, or modification to an activity that—

(i) Requires a new resource, type of data, policy, modification to an existing policy, process, or infrastructure;

(ii) Expands the scope or increases the level of credit risk, market risk, or operational risk to the Enterprise; or

(iii) Involves a new category of borrower, investor, counterparty, or collateral;

(3) A pilot or a modification to the volume or duration of a pilot, including a modification to a pilot that commenced before February 27, 2023; or

(4) An activity that results from a pilot (including from a pilot that commenced before February 27, 2023) or an enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) to an activity that results from a pilot (including from a pilot that commenced before February 27, 2023).

(b) A new activity excludes:

(1) An enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) to the technology, operating system, or software to operate the automated loan underwriting system of an Enterprise that was in existence as of July 30, 2008.

(2) An enhancement, alteration, or modification (as described by paragraphs (a)(2)(i) through (iii) of this section) to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an Enterprise, provided that such enhancement, alteration, or modification does not alter the underlying transaction so as to include services or financing, other than residential mortgage financing.

(3) Pursuant to the requirements of § 1253.8, any activity undertaken by an Enterprise that is substantially similar to—

(i) The automated loan underwriting system of an Enterprise that was in existence as of July 30, 2008, including or any enhancement, alteration, or modification to the technology, operating system, or software to operate the automated loan underwriting system;

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

(iii) A new product that the Director has approved for either Enterprise under § 1253.6(a) through (f) or § 1253.7 or a new product that is otherwise available to either Enterprise under § 1253.6(h).

(4) Any Enterprise business practice, transaction, or conduct performed solely to facilitate the administration of an Enterprise's internal affairs.

§ 1253.4 New product determination.

(a) A new product is any new activity that the Director determines merits public notice and comment about whether it is in the public interest.

(b) 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 advance any of the purposes of the Enterprise under its authorizing statute;

(2) The degree to which the new product serves underserved markets and housing goals as set forth in sections 1332–1335 of the Safety and Soundness Act (12 U.S.C. 4562–4565);

(3) The degree to which the new product is being or could be supplied by other market participants;

(4) The degree to which the new product promotes competition in the marketplace or, to the contrary, would result in less competition;

(5) The degree to which the new product overcomes natural market barriers or inefficiencies;

(6) The degree to which the new product might raise or mitigate risks to the mortgage finance or financial system;

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

(8) Such other factors as determined appropriate by the Director.

§ 1253.5 Notice of new activity.

(a) Before commencing a new activity, an Enterprise must submit a notice of new activity to FHFA. An Enterprise may request prior consultation with FHFA about whether a notice of new activity is required.

(b) In support of its notice of new activity, the Enterprise shall submit thorough, complete, and specific information as described under § 1253.9(a). FHFA will evaluate the notice of new activity to determine if the submission contains sufficient information to enable the Director to determine whether the new activity is a new product subject to prior approval. Once FHFA makes the determination that the submission is complete, FHFA will notify the Enterprise that the submission is ''received'' for purposes of 12 U.S.C. 4541(e)(2)(B).

(c) Nothing in this regulation limits or restricts FHFA from reviewing a notice of new activity under any other applicable law, under the Director's authority to review for safety and soundness, or to determine whether the activity complies with the Enterprise's authorizing statute. FHFA may conduct such a review as part of its determination that the notice of new activity submission is complete.

(d) No later than 15 days after FHFA notifies the Enterprise that the submission is received, the Director will make a determination on the notice of new activity and will notify the Enterprise accordingly. If the Director determines that the new activity is a new product, the Enterprise must elect to either submit a request for prior approval of the new product under § 1253.6 or discontinue its plan to offer the new product to the market.

(e) If the Director determines that the new activity is not a new product, or if after the passage of 15 days the Director does not make a determination whether the new activity is a new product, the Enterprise may commence the new activity. The Director may establish terms, conditions, or limitations on the Enterprise's engagement in the new activity as the Director determines to be appropriate and with which the Enterprise must comply in order to engage in the new activity.

(f) If the Director does not make a determination within the 15-day period, the absence of such determination does not limit or restrict the Director's safety and soundness authority or the Director's authority to review the new activity to confirm that the activity is consistent with the Enterprise's authorizing statute.

§ 1253.6 Request for prior approval of a new product; public notice; standards for approval.

(a) An Enterprise must submit a request for prior approval of a new product to FHFA before offering a new product to the market.

(1) An Enterprise may submit a request for prior approval of a new product if the Director determines that a new activity is a new product under § 1253.5(d) or, following consultation with FHFA, if the Director authorizes the Enterprise to submit such a request without first submitting a notice of new activity. An Enterprise must submit a request for prior approval of a new product to FHFA before offering a new product to the market.

(2) In support of its request for prior approval of a new product, the Enterprise shall submit thorough, complete, and specific information as described under § 1253.9(b).

(3) FHFA will evaluate the request to determine if the submission contains sufficient information for FHFA to prepare a public notice such that the public will be able to provide fully informed comments on the new product. Once FHFA makes the determination that the submission is complete, FHFA will notify the Enterprise that the submission is ''received'' for purposes of 12 U.S.C. 4541(c)(2).

(b) Following FHFA's determination that a submission is complete, FHFA will publish a public notice soliciting comments on the new product on FHFA's website and in the **Federal Register** without delay.

(1) The public notice will describe the new product and will include such information from the request for prior approval of a new product as necessary to provide the public with sufficient notice and opportunity to comment on the new product. The public notice will provide instructions for the submission of public comments.

(2) The public will have 30 days from the date that the public notice is published in the **Federal Register** to provide comments on the new product.

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

(c) No later than 30 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.

(d) The Director may approve the new product if the Director determines that the new product:

(1) In the case of Fannie Mae, is authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or

(2) In the case of Freddie Mac, is authorized under 12 U.S.C. 1454(a)(1), (4), or (5); and

(3) Is in the public interest; and

(4) Is consistent with the safety and soundness of the Enterprise or the mortgage finance system.

(e) The Director may consider the factors provided in § 1253.4(b) when determining whether a new product is in the public interest.

(f) The Director may establish terms, conditions, or limitations on the Enterprise's offering of the new product with which the Enterprise must comply in order to offer the new product.

(g) If the Director disapproves the new product, the Enterprise may not offer the new product.

(h) If the Director does not make a determination within 30 days after the end of the public comment period, the Enterprise may offer the new product. The absence of such a determination within 30 days does not limit or restrict the Director's safety and soundness authority or the Director's authority to review the new product to confirm that the product is consistent with the Enterprise's authorizing statute.

(i) The Director may request any information in addition to that supplied in the completed request for prior approval of a new product if, as a result of public comment or otherwise in the course of considering the request, the Director believes that the information is

necessary for the Director's decision. The Director may disapprove a new product if the Director 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 this section.

§ 1253.7 Temporary approval of a new product.

(a) The Director may approve a new product without first seeking public comment as described in § 1253.6 if:

(1) In addition to the information required by § 1253.9(b), the Enterprise submits a specific request for temporary approval that describes the exigent circumstances that make the delay associated with a 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

(2) Notwithstanding the absence of a request by the Enterprise for temporary approval, the Director determines on the Director's own initiative that there are exigent circumstances that make the delay associated with first seeking public comment contrary to the public interest.

(b) The Director may impose terms, conditions, or limitations on the temporary approval to ensure that the new product offering is consistent with the factors in § 1253.6(d).

(c) 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 in accordance with § 1253.6.

(d) 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 this section.

§ 1253.8 Substantially similar activities.

(a) An Enterprise shall notify FHFA of its intent to commence an activity that is substantially similar to any of the following activities at least 15 days prior to offering the activity:

(1) The automated loan underwriting system of an Enterprise that was in existence as of July 30, 2008, including any enhancement, alteration, or modification to the technology, operating system, or software to operate the automated loan underwriting system;

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

(3) A new product that the Director has approved for either Enterprise under § 1253.6(a) through (f) or § 1253.7 or a new product that is otherwise available to either Enterprise under § 1253.6(h).

(b) The Director may determine that an activity is substantially similar to an activity described in paragraph (a)(1) or (2) of this section, if the activity is:

(1) A technology system that applies mortgage terms and conditions or underwriting criteria to residential mortgages that are purchased or guaranteed by an Enterprise; or

(2) An enhancement, alteration, or modification to the technology, operating system, or software to operate a technology system described in paragraph (b)(1) of this section.

(c) The Director may determine that an activity is substantially similar to an activity described in paragraph (a)(3) of this section, if the activity:

(1) Requires the same or a similar resource, type of data, policy, process, and infrastructure;

(2) Entails the same or similar levels of credit risk, market risk, and operational risk to the Enterprise; and

(3) Involves the same or a similar category of borrower, investor, counterparty, and collateral.

(d) The notification is not required to be a notice of new activity. The notification shall include the name and a complete and specific description of the activity, as well as an explanation of why the Enterprise believes the activity qualifies as a substantially similar activity under paragraph (a) of this section.

(e) Public notice and comment is not required in connection with offering substantially similar activities.

(f) If the Director determines an activity is not a substantially similar activity, the Enterprise must submit a notice of new activity under § 1253.5 or a request for prior approval of a new product under § 1253.6 and may not proceed or continue with the activity except pursuant to the requirements in this part.

§ 1253.9 New activity and new product submission requirements.

(a) A notice of new activity must provide the following items of information and appropriate supporting documentation. The corresponding paragraph number should be listed with the relevant information provided:

(1) Provide the name of the new activity and a complete and specific description of the new activity that identifies under which paragraph(s) of § 1253.3(a) the activity is described.

(2) Describe the business rationale, the intended market, the business line, and what products are currently being offered or are proposed to be offered under such business line. Also, include a description of any market research performed relating to the new activity.

(3) State the anticipated commencement date for the new activity. Provide analysis, including assumptions, development expenses, any applicable fees, expectations for the impact of and projections for the quarterly size (for example, in terms of cost, personnel, volume of activity, or risk metrics) of the new activity for at least the first 12 months of deployment, as well as the impact of the new activity on the risk profile of the Enterprise and the key controls for the following risks: credit, market, and operational.

(4) If the new activity is a pilot, include the parameters, such as duration, volume of activity, and performance. If the new activity is the result of a pilot, include an analysis on the effectiveness of the pilot that describes the pilot objectives and success criteria; volume of activity; performance; risk metrics and controls; and the modifications made for a broader offering and rationale.

(5) Provide a fair housing and fair lending self-evaluation of the new activity. The self-evaluation should, at a minimum, include data on the predicted impact of the new activity for protected class categories; a summary of reasonable alternatives considered; if disparities are identified, the business justification for the new activity; and the extent to which the activity furthers fair housing and fair lending.

(b) A request for prior approval of a new product must provide the following items of information with appropriate supporting documentation. The corresponding paragraph number should be listed with the relevant information provided:

(1) Provide the information required for a notice of new activity as identified in paragraph (a) of this section.

(2) Describe the business requirements for the new product including technology requirements. Describe the Enterprise business units involved in conducting the new product, including any affiliation or subsidiary relationships, any third-party

relationships, and the roles of each. Describe the reporting lines and planned oversight of the new product.

(3) Provide a legal analysis as to whether the new product is—

(i) In the case of Fannie Mae, authorized under 12 U.S.C. 1717(b)(2), (3), (4), or (5) or 12 U.S.C. 1719; or

(ii) In the case of Freddie Mac, authorized under 12 U.S.C. 1454(a)(1), (4), or (5).

(4) Provide copies of all notice and application documents, including any application for patents or trademarks, the Enterprise has submitted to other Federal, State or local government regulators relating to the new product.

(5) Describe the impact of the new product on the public interest and provide information to address the factors listed in § 1253.4(b).

(6) Describe how the new product is consistent with the safety and soundness of the Enterprise or the mortgage finance system.

(7) Explain any accounting treatment proposed for the new product.

(c) FHFA may require an Enterprise to submit such further information as the Director deems necessary to make a determination on a notice of new activity or a request for prior approval of a new product, at the time of the original submission or any time thereafter.

(d) An Enterprise shall certify, through an executive officer, that a notice of new activity or a request for prior approval of a new product and any supporting material submitted to FHFA pursuant to this part contain no material misrepresentations or omissions. FHFA may review and verify any information filed in connection with a notice of new activity or request for prior approval of a new product.

§ 1253.10 Public disclosure.

In addition to information disclosed in the public notice on a new product, FHFA will make public information related to the Director's determinations on new activity and new product submissions within a reasonable time period after the end of the calendar year during which either Enterprise filed such a submission. Any disclosure under this paragraph will omit any confidential and proprietary information not previously disclosed as part of a public notice on a new product.

§ 1253.11 Preservation of authority.

The Director's exercise of the Director's authority pursuant to the prior approval authority for products under 12 U.S.C. 4541, and this regulation, in no way restricts:

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

(b) 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 authorizing statute of an Enterprise.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2022–27942 Filed 12–23–22; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0465; Project Identifier AD–2022–00330–R; Amendment 39–22288; AD 2022–27–03]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–20–10 for certain Leonardo S.p.a. Model AB139 and AW139 helicopters. AD 2021–20–10 required removing from service a certain part-numbered main gearbox (MGB) spherical bearing lock nut (lock nut) that is installed on certain part-numbered MGBs and replacing it with a newly designed MGB lock nut. AD 2021–20–10 also prohibited installing any MGB with the affected MGB lock nut and prohibited installing any affected MGB lock nut on any helicopter. Since the FAA issued AD 2021–20–10, it was discovered that a part number (P/N) was incorrectly listed and that the applicability needed to be clarified. This AD retains the requirements of AD 2021–20–10 and clarifies the applicability. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 31, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 22, 2021 (86 FR 57574, October 18, 2021).

ADDRESSES: For service information identified in this final rule, contact Leonardo S.p.a. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *customerportal.leonardocompany.com/en-US/*. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information that is incorporated by reference is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–0465.

Examining the AD Docket

You may examine the AD docket at *regulations.gov*by searching for and locating Docket No. FAA–2022–0465; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–20–10, Amendment 39–21748 (86 FR 57574, October 18, 2021) (AD 2021–20–10). AD 2021–20–10 applied to Leonardo S.p.a. Model AB139 and AW139 helicopters, without MGB lock nut P/N 3G6320A09152 installed and with MGB P/N 3G6320A00131, 3G6320A00132, 3G6320A00133, 3G6320A00134, 3G6320A00135, 3G6320A00136, 3G6320A22031, 4G6320A00132, or 4G6320A00133 installed; or MGB P/N 3G320A00133 with serial number (S/N) M23 installed, or MGB P/N 3G6320A00134, with S/N M6, N76, N92, P124, P129, P131, P162, P184, Q230, Q243, Q249, R272, V21, V39, V96, V163, V211, V241, V272, V281, V384, V386, or V622 installed; or MGB P/N 3G6320A00136 with S/N AW1, AW2, AW3, AW5, or AW10 installed.

AD 2021–20–10 required, within 100 hours time-in-service (TIS), or during the next scheduled MGB overhaul, whichever occurs first after the effective