January 4, 2021

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Eighth Floor
400 Seventh Street, SW
Washington, DC 20219

Attention: Comments/RIN 2590-AA17 Prior Approval for Enterprise Products

Dear Mr. Pollard:

On behalf of the National Taxpayers Union (NTU), I write to submit our views regarding the notice of proposed rulemaking ("proposed rule") that would require the Government-Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac to provide advance notice to FHFA of new activities and obtain prior approval before launching new products. NTU applauds FHFA for proposing yet another rule that protects taxpayers and right-sizes the GSEs' role to ensure they do not compete with private entities outside the secondary mortgage market. In these comments we wish to elaborate on specific aspects of this rule, as well as opportunities for additional improvements

In the 12 years since conservatorship began, Fannie Mae and Freddie Mac have both dramatically expanded their operations by offering new products and services beyond the secondary mortgage market. These pilot programs and products serve a varying number of functions but have mostly added to the level of risk exposure to taxpayers. For years NTU has raised alarms regarding the legality and necessity of these pilot programs, such as IMAGIN, EPMI, and others. In 2019 we urged then FHFA acting-director Otting to "suspend pilot programs that are supposed to be prohibited in [the GSEs'] charters."

NTU opposes these pilot programs because represent a continued blurring of the "bright line" separation between primary market and secondary market activities. Engaging in these activities requires taxpayers to shoulder a greater burden of risk and expands the government's presence in the mortgage marketplace.

The development, approval, and implementation of new products and activities lack meaningful oversight and transparency. Despite the hundreds of millions of dollars affecting the housing finance system, no pilot program has been subject to a public notice and comment period. A public comment process allows market stakeholders, including taxpayers, to provide feedback on the need for a proposed pilot and to identify potential impacts to the market. There are also concerns that the GSEs are purposefully expanding their business activities to further entrench themselves in the housing finance system, which complicates efforts to enact comprehensive reform.

Thankfully, under the leadership of Director Calabria, FHFA is conducting a thorough review of the GSEs' pilots to ensure their activities comply with their congressional charters. On September 18, 2019, FHFA

announced the end of the GSEs' Mortgage Servicing Rights (MSR) pilot program. Established in 2018, the pilot was intended to provide liquidity to non-bank servicers. While both GSEs were approved for the program, only Freddie went ahead. In his press release explaining the termination of the MSR program, Director Calabria stated, "The MSR market is already served by a wide assortment of highly competitive private sources of capital and financing. Going forward, the Enterprises should focus on activities that are core to the guaranty business, mitigate risk, and are essential to end the conservatorships."

Thankfully, the proposed rule solves part of this problem by requiring advance notice and approval by the regulator before the implementation of any pilot program or product. Importantly, the proposed rule requires a 30-day public comment period for new products. Both of these changes are a welcome development that promotes transparency.

NTU offers just three suggestions to improve an already strong rule. First, we believe FHFA should fashion this rule to require analysis and approval of any pilot program currently in operation. While these pilots will need reapproval when they expire, we believe that timetable to be too long to prevent risks to taxpayers as well as potentially unfair competition with the private sector. Secondly, instead of a 30-day public comment period for new products, FHFA should create a 60-day comment period so stakeholders can adequately review, model, and comment.

NTU would also be supportive, either through executive rulemaking or Congressional action, to prohibit any enterprise in federal conservatorship to invest, design, or implement costly pilot programs that would displace private market participants. Fannie and Freddie already benefit from a federal backstop; it is unfair for them to continue to use their unique position to push more businesses out of the market.

Additionally, Congress should codify a set of safeguards on this issue that would be in place should this rule be revoked or altered by a future FHFA director. Specifically, Congress should pass a law that requires FHFA to demonstrate:

- Clear reasoning as to why such a program is permitted by the GSEs' charters;
- Clear evidence of a market failure, in which no other suppliers can be expected to provide such services with reasonable effectiveness, scope, and equity;
- A quantitative impact study, including a cost-benefit analysis; and
- A reasonably-timed open comment period for stakeholders.

Although FHFA cannot compel Congress to take such action, we mention it here to remind all policymakers that a holistic, lasting solution to the problems of GSE mission creep requires a multifaceted response.

FHFA should once again be commended for a rule that will bring a new level of transparency and accountability to Fannie Mae and Freddie Mac. These safeguards in the proposed rule would help to ensure that the GSEs are neither crowding out private market competitors nor expanding obligations back-stopped by taxpayers. For the aforementioned reasons, NTU respectfully submits these comments in support of the Proposed Rule on Prior Approval for Enterprise Products (RIN 2590-AA17). NTU is at your service to further assist you in your deliberations and we are thankful for your consideration of our views.

Sincerely,

Thomas Aiello
Policy and Government Affairs Manager