FHFA: Duty to Serve Webinar Notes December 19, 2016

The following notes are from a Webinar hosted by the Federal Housing Finance Agency ("FHFA") on December 19, 2016 to discuss the recently-published Final Rule on Enterprise Duty to Serve Underserved Markets (12 CFR Part 1282). The Duty to Serve Underserved Markets, established in the Housing and Economic Recovery Act of 2008 ("HERA"), requires the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises") to serve three specified underserved markets – manufactured housing, affordable housing preservation, and rural markets – in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for very low-, low-, and moderate-income families in those markets. The final rule issued by FHFA specifies the scope of Enterprise activities that will be eligible to receive Duty to Serve credit and provides a framework for FHFA's method for evaluating and rating the Enterprises' compliance with the Duty to Serve each underserved market.

For more information, on FHFA and the Duty to Serve, please visit www.fhfa.gov/dts.

Webinar Notes

Objective: Overview of the Final Rule and Opportunity to Ask Questions/Next Steps

Recording of Webinar will be published at WWW.FHFA.GOV/DTS.

Note: There will be a public listening session in Washington, DC at the FHFA Headquarters on February 8, 2017, for participants to provide remarks on what they hope to see in the Draft Plans. Registration is available at www.fhfa.gov/dts.

Agenda:

- Overview of what's in the final rule and changes from proposed rules
- Public listening sessions set up with Fannie, Freddie, Fed. Reserve, and FHFA HQs
- Timeline for Development of Duty to Serve Plan
- Q&A

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What is the Duty to Serve?

HERA established for Fannie and Freddie a duty to serve very low, low, and moderate-income families in three specific underserved markets: Manufactured Housing, Affordable Housing Preservation, and Rural Housing.

Underserved Markets Plan (each category of activity is further defined in final rule):

Manufactured Housing – includes Regulatory and Additional Activities

Affordable Housing Preservation – includes Statutory, Regulatory, and Additional Activities

Rural Housing – includes Regulatory and Additional Activities

For each activity, the Enterprises will use the Underserved Markets Plan to establish objectives. The objectives ought to identify specific, measurable tasks for each activity and meet one of four evaluation areas: outreach, loan products, loan purchase, and investments. Opportunities exist for the Enterprises to earn extra credit for accomplishing certain challenging or impactful activities or objectives. FHFA will identify the specific activities eligible for extra credit.

Manufactured Homes:

Manufactured Homes' Underserved Markets Plan will cover regulatory and additional activities.

Regulatory Activities:

(1) Support manufactured homes titled as personal property (chattel);

(2) Support manufactured homes titled as real property;

(3) Support manufactured housing communities owned by government entities or instrumentalities, nonprofits, or residents;

(4) Support manufactured housing communities with specified minimum tenant pad lease protections.

Request for input on chattel lending will go out in January.

Additional Activities: Eligible Additional Activities proposed by the Enterprises in their Plans and consistent with the HERA household income-eligibility categories.

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Affordable Housing Preservation:

Affordable Housing Preservation's Underserved Markets Plan will cover statutory, regulatory, and additional activities.

Statutory Activities:

(1) Section 8 Programs;

(2) Section 236 rental and cooperative housing programs;

(3) Section 221(d)(4) moderate-income and displaced families;

(4) Section 202 elderly;

(5) Section 811 persons with disabilities;

(6) Permanent Supportive Housing projects and homeless assistance;

(7) Low-income housing tax credits;

(8) Comparable state or local affordable housing programs.

Regulatory Activities:

(1) Small multifamily rental property financing activity (5-50 units, lender size less than $10B);

(2) Financing of multifamily energy or water efficiency improvements;

(3) Financing of single-family energy or water efficiency improvements;

(4) Affordable homeownership preservation (shared equity) financing;

(5) HUD's Choice Neighborhood Initiative (CNI);

(6) HUD's Rental Assistance Demonstration Program (RAD);

(7) Financing of purchase or rehabilitation of certain distressed properties.

Additional Activities: Eligible Additional Activities proposed by the Enterprises in their Plans and consistent with the HERA household income-eligibility categories.

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Rural Housing:

What is Rural Housing? A two-prong definition: (1) a census tract outside of a metropolitan statistical area as designated by the Office of Management and Budget; or (2) a census tract that is in an MSA but outside of the MSA's Urbanized Areas as designated by USDA's RUCA Code #1, and outside of tracts that have a housing density of over 64 housing units per square mile for USDA's RUCA Code #2.

Rural Housing's Underserved Markets Plan will cover regulatory and additional activities.

Regulatory Activities:

(1) Support housing in high-needs rural regions:

a. Middle Appalachia;

b. The Lower Mississippi Delta;

c. Colonias;

d. Rural tracts in persistent poverty counties not in the above three regions;

(2) Support housing for high-needs rural populations:

a. Native Americans in Indian Areas;

b. Agricultural Workers;

(3) Support financing by small financial institutions of rural housing;

(4) Support small multifamily rental property (5-50 units) activity in rural areas.

Additional Activities: Eligible Additional Activities proposed by the Enterprises in their Plans and consistent with the HERA household income-eligibility categories.

Evaluations of Compliance: This replaces the previously-proposed 100-point evaluation and is likely to be published within the next 30 days.

Step 1: Quantitative Assessment

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Evaluation of level of objectives accomplished.

Step 2: Qualitative Assessment

Evaluation of accomplishments based on skillful implementation and impact.

Step 3: Extra Credit Assessment

Assessment of extra credit-eligible activities, which may raise rating.

Final Rating

Exceeds, High Satisfactory, Low Satisfactory, Minimally Passing, Fails

Timeline for Underserved Markets Plan:

January – March, 2017: Public input period on Proposed Evaluation Guidance.

April, 2017 – Draft Plans submitted to FHFA, with opportunity for public input.

December 1, 2017 – FHFA Non-Objections to Plans are issued.

January, 2018 – Plans become effective.

Public Listening Sessions – what do you hope to see in the draft plans?

January 25, 2017: Fed. Reserve Bank of Chicago

February 1, 2017: Fed. Reserve Bank of San Francisco

February 8, 2017: FHFA Headquarters, Washington, DC

February 9, 2017: Webinar

Registration is open on the website (www.fhfa.gov/dts). All stakeholders are invited to attend and may request to make brief remarks. Requests to attend will be reviewed by FHFA and the Enterprises to ensure fairness and representation before attendees are confirmed.

Website will be a place to provide feedback on the program. Initially, a lot of DTS inquiries are expected; feedback times may be a bit longer than usual.

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Questions and Answers:

1) Question asks about specifics of chattel loan purchase and raises issues such as required credit standards, servicing procedures, treatments of deficiencies, requirements for placing homes in communities or on borrower's land, and loan seller qualifications. Has any thought been given to these in the final rule?

    a. Short answer: No, the rule doesn't contain specifics. The Enterprises are expected to conduct significant research and development prior to engaging in chattel loan purchases. FHFA does have a request for input on chattel loans and welcomes feedback and suggestions online. FHFA will also be holding public listening sessions. Additionally, once evaluations guidance and underserved markets plans are drafted, public feedback will be sought. Enterprises should work directly with potential counterparties to develop these specifics.

2) What success level does FHFA expect of a chattel loan program?

    a. Loans must have reasonable terms and conditions and must be beneficial to the income levels targeted. The loans must also be safe and sound. However, a lower profit level will be allowed for Duty to Serve loans than what Enterprises might otherwise expect or require from other product lines.

3) Press release on Duty to Serve final rule says the final rule sets forth specific activities and proposes additional activities; however, the final rule does not require the Enterprises to cover any specific activity. Please elaborate.

    a. The final rule doesn't require or mandate that Enterprises engage in any specific activity or in any new business initiative. However, though not mandatory, an Enterprise will be required to consider a minimum number of statutory or regulatory activities. To "consider an activity," the Enterprise has two options. First, the Enterprise can choose to undertake an activity and may state the reasons why it is undertaking such activity. Alternatively, second, the Enterprise may choose not to undertake an activity and must explain the reasons behind its decision.

4) Question asks presenters to walk through the evaluation process. Will scores be made public? What if Enterprises "fail"?

    a. All three markets will be evaluated individually and on an annual basis using a three-step process to evaluate quantitative, qualitative, and extra credit factors (outlined further in above notes). Upon completion of an evaluation, the

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evaluation results will be sent to Congress and released to the public. If an Enterprise fails to meet its Duty to Serve obligation, it may have to do a corrective plan.

5) Will there be any loan purchase quotas for Fannie and Freddie?

   a. No. Congress specifically did not want a loan purchase quota. However, loan purchase chattel may be more restricted.

6) What is the connection between HERA's Housing Goals and the Duty to Serve for Enterprises?

   a. These are two separate goals in HERA. Both Housing Goals and Duty to Serve have the objective of facilitating a secondary market for mortgages on properties supporting lower-income families. However, these requirements are outlined differently. Duty to Serve statute looks beyond just loan purchases and specifies four stages of the loan mortgage process that will be considered (note, these are the four evaluation areas: outreach, loan product changes, investment, and loan purchases). Whereas Housing Goals apply more generally, Duty to Serve goes more deeply in a few underserved markets (Manufactured Homes, Affordable Housing Preservation, and Rural Housing).

7) What is FHFA's thinking on the Enterprises engaging in "new business" under Duty to Serve in light of their current capital status?

   a. As with all activities undertaken by the Enterprises, safety and soundness is still a priority for FHFA. FHFA will continue to provide oversight of the Enterprises as FHFA reviews their proposed activities in the proposed market plans and also in analyzing and evaluating Duty to Serve activities. If a Duty to Serve activity proposes a risk to the safety or soundness of an Enterprise, FHFA will require the Enterprise stop or alter the activity.

8) Has FHFA permitted Fannie and Freddie to resume investing in LIHTC? If so, how will they be allowed to do this?

   a. The Rule does not specifically authorize Fannie and Freddie to resume investing in LIHTC. Whether to permit this is a decision for FHFA as a conservator. If FHFA (acting as conservator) authorizes LIHTC investments, then the Enterprise could receive credit under the Duty to Serve. However, the Duty to Serve does not create any new authority for Fannie or Freddie to engage in any activities that they are not otherwise permitted to do. Among things Fannie and Freddie are authorized to do or could engage in in the future, the rule addresses whether they'll receive Duty to Serve credit.

9) Can Enterprises update their Market Plans?

    a. Yes. Plans may be adjusted annually subject to an FHFA non-objection to the proposed modification.

10) Does the final rule interpret Preservation to include certain kinds of new construction? If so, what kinds of affordable housing are included?

    a. The final rule says that activities that support certain kinds of permanent construction take out loans will be eligible for Duty to Serve credit. Permanent construction take out loans are long term loans designed to replace a short term construction loan. For replacement properties, this would mean preserving existing housing. For housing developed under state or local programs, this would look at areas where all or a portion of the units are income restricted.

11) What opportunities will the manufactured housing industry have to comment on chattel loans?

    a. The Agency will publish a request for input on chattel lending. Responses that will be the most helpful to FHFA moving forward will be those that are specific and contain data in support of any recommendations. Beyond that, the three scheduled in-person listening sessions (and an additional one listening session to be held via webinar) will cover all three Duty to Serve markets and will aim to accommodate as many participants as possible. In addition, the manufactured housing industry is encouraged to engage with the Enterprises directly.

12) Will the evaluation of Enterprises include Enterprise efforts to partner with private sector partners in meeting Duty to Serve obligation?

    a. Yes. One way to get Duty to Serve credit is to engage in outreach activities. This encourages Enterprises to partner and engage with a variety of organizations and a diversity of stakeholders.

13) Is a passing rating in all three underserved markets required for the Enterprise to be compliant with Duty to Serve?

    a. Yes. Compliance on Duty to Serve will be evaluated individually for each market – manufactured housing, affordable housing preservation, and rural housing.

Enterprises must pass each individual market in order to be in compliance with the overall Duty to Serve statutory obligation.

14) Question asks about the Duty to Serve requirement for LIHTC and seeks additional detail on FHFA process for determining whether the Enterprise is authorized to make LITHC equity investments.

    a. The final Duty to Serve rule only explains what activities would be eligible for Duty to Serve credit, assuming the activity is permissible under FHFA's current policies and procedures. If an Enterprise proposed the activity of LIHTC equity investment, FHFA (as conservator) would go through a process to determine whether it approves that activity or not. In the future, if FHFA does authorize certain LIHTC investments by Enterprises, the final rule explains which LIHTC investments would be eligible for Duty to Serve credit (primarily only those LIHTC investments in rural areas). In the future, FHFA might decide to provide greater Duty to Serve credit to those serving tiny rural populations and areas specifically.

15) If Enterprises are released from conservatorship, does Duty to Serve still apply?

    a. Yes. This final rule will apply regardless of whether Enterprises remain in conservatorship or not. FHFA is acting as regulator here and Duty to Serve final rule will apply outside of conservatorship.

Closing Remarks: Webinar is recorded. Recording will be posted at www.fhfa.gov/dts. Other questions may be emailed to Dutytoservestakeholders@fhfa.gov.

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