



# Final Regulation

## **Federal Housing Finance Agency: Enterprise Duty to Serve Underserved Markets**

**17-EF-02**

**NAFCU would like to highlight the following:**

- The Federal Housing Finance Agency (FHFA) has issued a final rule requiring Fannie Mae and Freddie Mac (the Enterprises) to adopt plans to serve three specified underserved markets – manufactured housing, affordable housing preservation, and rural markets.
- The objective of the final rule is to increase the liquidity of mortgage investments and enhance the distribution of investment capital available for mortgage financing for very low-, low-, and moderate-income families in the above-mentioned underserved markets.
- The final rule specifies the activities in which the Enterprises may engage to be eligible to receive Duty to Serve credit; those activities are related to: manufactured homes titled as real or personal property, blanket loans for certain manufactured housing communities, preserving the affordability of housing for renters and homebuyers, and housing in rural markets.
- The final rule also establishes a framework for the FHFA to evaluate each Enterprise's compliance with respect to each underserved market.
- This final rule will not inflict any additional compliance burden on credit unions.

**Effective Date:**

**January 30, 2017**

## Summary

The FHFA released a final rule to implement the Enterprises' statutory Duty to Serve the following three underserved markets: manufactured housing, affordable housing preservation, and rural housing. The final rule creates a process for the Enterprises to plan activities to comply with their Duty to Serve requirement as well as a process for the FHFA to annually evaluate the Enterprises' compliance with its obligations.

More specifically, the final rule requires the Enterprises to each prepare an Underserved Markets Plan (Plan) to outline the specific activities (grouped as Statutory Activities, Regulatory Activities, or Additional Activities, which the FHFA has determined to be eligible for that underserved market) it will pursue to fulfill its Duty to Serve in each of the underserved markets over a three-year period. The final rule sets up procedures for the Enterprises to consider a range of activities when developing their Plans. The final rule also establishes an evaluation and ratings process for the FHFA to gauge the Enterprises' performance in fulfilling their Plans. The FHFA will prepare Evaluation Guidance which, along with the Enterprises' Plans, will constitute the basis for the FHFA's evaluations and ratings. The evaluation and rating process will be conducted on an annual basis and the FHFA will publicly report on its reasoning for assigning each rating.

Most notable, the final rule includes manufactured homes titled as chattel as one of the eligible Regulatory activities to be included in the Enterprises' Plan for the manufactured housing market. NAFCU, in its comment letter on the 2015 proposed rule, strongly supported the inclusion of chattel loans secured by personal property. Under the final rule, the Enterprises will be able to receive Duty to Serve credit for chattel loans on manufactured homes titled as personal property.

A copy of the final rule can be found [here](#).

This Final Regulation includes this brief summary, background, and section-by-section analysis of the final rule. We urge you to read the materials carefully. Should you have any questions or require additional information, please contact Ann Kossachev, Regulatory Affairs Counsel, at (703) 842-2212, or [akossachev@nafcu.org](mailto:akossachev@nafcu.org).

## Background

The *Federal Housing Enterprises Financial Safety and Soundness Act of 1992* (the Act), as amended by the *Housing and Economic Recovery Act of 2008*, requires the FHFA to "facilitate the financing of affordable housing for low- and moderate-income families." See 12 U.S.C. 4501(7). The Enterprises are required to provide leadership in developing loan products and flexible underwriting guidelines to help establish a secondary market for mortgages on housing for very low-, low-, and moderate-income families for manufactured housing, affordable housing preservation, and rural markets. The Act also requires the FHFA to create a method for evaluating and rating the Enterprises' compliance with the Duty to Serve underserved markets.

On August 4, 2009, the FHFA's Advance Notice of Proposed Rulemaking on the Enterprise

Duty to Serve underserved markets was published in the *Federal Register*. Next, on June 7, 2010, the FHFA's proposed rule on the Duty to Serve was published in the *Federal Register*. No final rule was issued after the close of the comment period in 2010, so the FHFA developed a new Duty to Serve proposed rule in 2014. That proposed rule was published in December 2015, with the comment period closing in March 2016. In response to the 1,567 comments received on the 2015 proposed rule, the FHFA has made some substantive and minor technical changes to craft this final rule on the Duty to Serve.

## **Section-by-Section Analysis**

The following is a section-by-section analysis of some highlights of the finalized amendments to the Enterprise Duty to Serve Underserved Markets rule. This analysis does not summarize the entire Duty to Serve rule, only select substantive sections of the rule that have been changed by this final regulation.

### ***Consideration of Minimum Number of Activities - § 1282.32(d)(1)***

Although the final rule does not require the Enterprises to engage in any particular activity to obtain Duty to Serve credit, the rule does require that the Enterprises consider a range of activities and explain why they did or did not choose to include activities in their Plans. The FHFA will state in the Evaluation Guidance a minimum number of Statutory or Regulatory Activities that the Enterprises must consider and address in their plans, giving the Enterprises more flexibility to decide which activities to address. This is different from the proposed rule because the proposal required the Enterprises to consider and explain every Statutory and Regulatory Activity specified in the rule.

### ***Posting of Proposed Plans and Public Input - § 1282.32(g)(2), (3)***

The final rule makes changes to the process and timeline for public input on the Enterprises' proposed Plans as set forth in the proposed rule. After the Enterprises submit their proposed Plans, the FHFA will post a public version of each proposed Plan, with appropriate redactions, on the FHFA's website for public input. The final rule provides that the public input period will be 60 days, instead of the 45 days provided in the proposed rule.

### ***Eligible Activities - § 1282.33(b), (c)(2)***

The final rule establishes a Regulatory Activity for Enterprise activities related to loans on manufactured homes titled as personal property, or chattel. The proposed rule included manufactured housing communities and manufactured homes titled as real property, but not manufactured homes titled as chattel. After reviewing numerous comments, including a comment letter from NAFCU, in support of including chattel loans as an eligible activity, the FHFA decided to establish a new Regulatory Activity in §1282.33(c)(2) of the final rule for chattel loans.

The FHFA will conduct a thorough review and assessment of any chattel loan pilot initiative, as proposed and as executed by the Enterprises. Initially, only approved chattel loan pilot

initiatives included in an Enterprise's Plan would be eligible for the Duty to Serve credit. Accordingly, an Enterprise's Plan should indicate when the Enterprise expects to begin purchasing chattel loans through their pilot initiative before actually purchasing any chattel loans. The FHFA will review the results of chattel loan pilot initiatives from both Enterprises, including an assessment of safety and soundness.

Due to the many considerations and risks associated with designing and proposing a chattel pilot initiative, the FHFA has decided to issue a Request for Information (RFI) to the public on what an Enterprise should include in its chattel pilot initiative. The RFI will conclude in time for the Enterprises to consider the input and include it in their draft Plans.

### ***Small Multifamily Rental Properties - § 1282.34(d)(1)***

The final rule creates a Regulatory Activity for loans on small multifamily rental housing, where the loan is provided by a community development financial institution (CDFI), insured depository institution, or federally insured credit union, with total assets of \$10 billion or less. The asset cap level included in the proposed rule was \$1.123 billion (\$1.128 billion with 2016 inflation adjustments). The FHFA considered the definitions of small financial institutions/community banks from various sources, including the *Community Reinvestment Act* (CRA) (\$304 million), the Consumer Financial Protection Bureau (CFPB) (\$2 million), the Federal Reserve Board (FRB) (\$10 billion), and the Office of the Comptroller of the Currency (OCC) (\$1 billion).

The FHFA sought to establish an asset cap that would be high enough to support substantially increasing the volume of small multifamily loan purchases. The FHFA determined that the \$10 billion cap used by the Federal Reserve Board would be the most appropriate asset cap. Additionally, the final rule also replaces the use of "community financial institutions" in the proposed rule with "insured depository institutions" to allow for a broader category of participating financial institutions.

### ***Definition of "Rural Area" - § 1282.1***

The final rule defines "rural area" as: (1) a census tract outside of a metropolitan statistical area (MSA) as designated by the Office of Management and Budget; or (2) a census tract in an MSA but outside of the MSA's Urbanized Areas as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of more than 64 housing units per square mile in USDA's RUCA Code #2. This is different from the proposed rule, which included the first prong of the final rule's definition but did not include all Urbanized Areas and Urban Clusters – RUCA Codes 1, 4, and 7 – within an MSA from being considered rural.

The FHFA changed the definition of "rural area" to more accurately target areas that are, in fact, rural in character, while excluding those areas that are more likely classified as suburban/exurban communities.

***Financing by Small Financial Institutions of Rural Housing - § 1282.35(c)(3)***

The final rule creates a new Regulatory Activity for Enterprise activities related to financing from small financial institutions of owner-occupied or multifamily rental housing in rural areas. The proposed rule did not include this as a Regulatory Activity. The FHFA considered definitions of small financial institutions/community banks from the CRA, CFPB, FRB, and OCC, and decided that it would adopt the CRA's definition of small banks below the "intermediate small bank" threshold, meaning less than \$304 million in assets.

**Effective Date**

The final rule will become effective on January 30, 2017.

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## NAFCU'S 2017 REGULATORY ALERTS

<b>Number</b>	<b>Topic</b>	<b>Date Issued</b>
17-EA-01	Treasury Participation in the Automated Clearing House	1/3/2017
17-EA-02	CDFI Fund: RFI Regarding Policies and Procedures	1/18/2017

## NAFCU'S 2017 FINAL REGULATIONS

<b>Number</b>	<b>Topic</b>	<b>Date Issued</b>
17-EF-01	FHFA: Acquired Member Assets	1/12/2017
17-EF-02	FHFA: Enterprise Duty to Serve Underserved Markets	1/18/2017