



Regulatory Alert

Federal Housing Finance Agency: Fannie Mae & Freddie Mac Duty to Serve Underserved Markets

15-EA-22

NAFCU would like to highlight the following:

- The Federal Housing Finance Agency (FHFA) issued a proposed rule that would require Fannie Mae and Freddie Mac (the Enterprises) to adopt plans to improve the distribution and availability of mortgage financing for residential properties that serve very low-, low-, and moderate-income families in the three specified underserved markets: (1) manufactured housing, (2) affordable housing preservation and (3) rural markets.
- Under the proposal, the Enterprises would be required to develop and submit a three-year Underserved Markets Plan for the FHFA to review and approve after public comment. Once approved, FHFA would annually evaluate and rate the Enterprises' performance under the Plans by allocating points for each Activity performed as a "Duty to Serve" credit. FHFA would submit its annual review of the Plan in a report to Congress.
- The Enterprises could earn Duty to Serve credit for the following eligible activities that could impact credit union mortgage lending in underserved markets, including:
 - **Manufactured Housing:** Credit would be provided for activities related to financing manufactured housing units titled as real estate and not "chattel" loans secured by personal property.
 - **Affordable housing preservation:** Credit would be provided for activities related to purchasing loan pools on small multifamily rental properties of 5 to 50 units from federally insured credit unions and small banks with under \$1 billion in assets, and other community-based lenders.
 - **Rural Housing:** Credit would be provided for activities to serve "rural areas," which is defined as (1) a census tract outside of a Metropolitan Statistical Area (MSA) as designated by the OMB, or (2) a census tract in an MSA, but outside of the MSA's Urbanized Areas and Urban Clusters, as designated by the USDA.

Comments due to NAFCU: February 26, 2016

Comments due to FHFA: March 17, 2016



Comment Now!

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Charter number of credit union:

Your name:

NAFCU requests your assistance in answering the following questions regarding the proposed rule. Please refer to the summary for background information. NAFCU appreciates any feedback you can provide. Contact Kavitha Subramanian, Regulatory Affairs Counsel, if you have any questions at (703) 842-2212, or ksubramanian@nafcu.org.

1. Under the proposal, FHFA states that Duty to Serve credit would be provided for activities related to financing manufactured housing units titled as real estate and not “chattel” loans secured by personal property. Do you support FHFA’s decision to no count chattel loans toward the manufactured housing goal? Why or why not?
2. Under the proposal, FHFA defines underserved rural areas as either (1) a census tract outside of a Metropolitan Statistical Area (MSA) as designated by the OMB, or (2) a census tract in an MSA, but outside of the MSA’s Urbanized Areas and Urban Clusters, as designated by the USDA. Do you believe this definition should be adopted or should FHFA instead adopt an alternative definition of “rural areas” such as the definition used by the CFPB? If so, please identify which one and explain.
3. FHFA states that Duty to Serve credit would also be provided for activities supporting housing in high-needs rural regions, defined as Middle Appalachia, the Lower Mississippi Delta region, and colonias, which are communities located primarily within 150 miles of the U.S.-Mexico border in Arizona, New Mexico, Texas, or California. Do you believe that there are additional underserved geographic areas that FHFA should consider adding to this list? Please explain.
4. Are there other activities that your credit union engages in to better serve underserved mortgage markets that you believe FHFA should recognize with Duty to Serve credit for the Enterprises?

Summary of the Notice of Proposed Rulemaking On Duty to Serve Underserved Areas for Fannie Mae & Freddie Mac

On December 15, 2015, the Federal Housing Finance Agency (FHFA) issued a proposed rule that would require Fannie Mae and Freddie Mac (the Enterprises) to adopt plans to improve the distribution and availability of mortgage financing for residential properties that serve very low-, low-, and moderate-income families in the three specified underserved markets: (1) manufactured housing, (2) affordable housing preservation and (3) rural markets.

The Enterprises would submit to FHFA a draft Underserved Markets Plan covering a three-year period on which the public would be invited to provide input prior to FHFA approval of the Plan. FHFA would annually evaluate and rate the Enterprises' performance under the Plans by allocating points for each Activity performed as a "Duty to Serve" credit. The proposed rule would provide Duty to Serve credit for eligible Enterprise activities that facilitate a secondary market for mortgages on residential properties in the specified underserved markets.

FHFA would provide Duty to Serve credit for activities that promote residential economic diversity in an underserved market for affordable housing in high opportunity areas or mixed-income housing in areas of concentrated poverty. In particular, for the manufactured housing market, Duty to Serve credit would be provided for Regulatory Activities that Fannie Mae and Freddie Mac undertake related to financing manufactured housing units titled as real estate and not "chattel" loans secured by personal property. In order to promote affordable housing options, the proposal would provide Duty to Serve credit for activities related to purchasing loan pools on small multifamily rental properties of 5 to 50 units from federally insured credit unions and small banks with under \$1 billion in assets, and other community-based lenders. Additionally, for the rural housing market, Duty to Serve credit would be provided for Activities that serve "rural areas," which is defined by the proposal as a census tract outside of a Metropolitan Statistical Area (MSA) as designated by the Office of Management and Budget, or a census tract in an MSA, but outside of the MSA's Urbanized Areas and Urban Clusters, as designated by the U.S. Department of Agriculture's Rural Urban Commuting Area codes.

This Final Regulation Alert includes this brief summary, background, and section-by-section analysis of the final rule. The full text of the proposal can be found [here](#). Should you have any questions or require additional information, please contact Kavitha Subramanian, Regulatory Affairs Counsel, at (703) 842-2212, or ksubramanian@nafcu.org.

Background

Under federal law, the Federal Housing Finance Agency (FHFA) is required to issue regulations to implement the Duty to Serve requirements specified in the *Federal Housing Enterprises Financial Safety and Soundness Act of 1992*, as amended by the *Housing and Economic Recovery Act of 2008* (HERA). In particular Fannie Mae and Freddie Mac (the Enterprises) are required to provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgagees on housing for very low, low-, and moderate-income families with respect to manufactured housing, affordable housing preservation and rural markets. FHFA must establish regulations providing a method for

evaluating and rating Fannie and Freddie's performances of the duty to serve underserved markets.

In August 2009, FHFA issued an Advance Notice of Proposed Rulemaking (ANPR) regarding the duty for the Enterprises to serve underserved markets under HERA. On June 1, 2010, FHFA issued a [proposed rule](#), which among other things, required the Enterprises to increase liquidity and improve the distribution of investment capital for these purposes and in underserved areas. While FHFA never completed the rulemaking process from 2009-2010, this second proposal issued in December 2015 would replace the June 2010 proposal.

Main Provisions: Section-by-Section Analysis

The following is a section-by-section analysis of the proposed requirements of the Fannie Mae and Freddie Mac Duty to Serve Underserved Markets Plan (the Plan) in the three specified underserved markets: (1) manufactured housing, (2) affordable housing preservation and (3) rural markets.

Underserved Markets Plans – Approval & Scoring

Each of the Enterprises would be required to submit a draft Underserved Markets Plan to FHFA covering a three-year period. The public would be allowed to provide input on the draft Plans prior to FHFA approval. The Plans would comprise "Core Activities," that the Enterprises would be required to consider in developing their Plans, including nine categories of Statutory Activities and eleven categories of Regulatory Activities developed by FHFA. Eligible Activities would receive Duty to Serve credit (scoring points). If Fannie Mae or Freddie Mac decides not to include a Core Activity in its Plan, it would be required to provide reasons why in the Plan.

The Enterprises would be permitted to modify their Plan during the three-year term, provided that FHFA has no objection to the change. The Enterprises are required to submit a new Plan to FHFA at least 180 days prior to the expiration of the existing Plan.

FHFA would annually evaluate and rate Fannie Mae and Freddie Mac's performance under their Plans by allocating points for each Activity performed and translating the composite scores to overall ratings for each of the three underserved markets. FHFA's criteria for evaluating an Enterprise's annual Duty to Serve compliance would be set forth in an evaluation guide. FHFA would compare the evaluation guide criteria to an Enterprise's actual performance under its Plan and assign a score to each Plan activity. FHFA would report those results to Congress on an annual basis.

Manufactured Housing

For the manufactured housing market, Duty to Serve credit would be provided for activities that the Enterprises undertake related to financing manufactured housing units titled as real estate property and not chattel loans secured by personal property. FHFA believes that real estate loans perform better, have greater borrower protections, and have lower default rates than chattel

financing. However, the proposed rule invites public comment on whether the final rule should authorize Duty to Serve credit for the purchase of chattel loans on manufactured housing. In particular, FHFA requests comments on what improvements could be made in originating and servicing chattel loans to make them safer for purchase by the Enterprises.

The Enterprises would also be required to consider undertaking activities related to purchasing blanket loans on the following types of manufactured housing communities:

- small communities with 150 rental sites or fewer;
- communities owned by their residents, nonprofits or governmental agencies; and
- communities where tenants' site leases include certain tenant protections.

FHFA believes that the Enterprises would be able to use their market influence to support improvements in the manufactured housing market, such as establishing pad lease protection standards and increasing the prevalence of small manufactured housing communities. *See* 80 FR 79192.

Affordable Housing Preservation

For affordable housing preservation, Duty to Serve credit would be provided for Statutory Activities that the Enterprises undertake related to preservation of affordable housing funded under the following federal and local programs enumerated in the statute:

- U.S. Department of Housing & Urban Development (HUD) Section 8 Rental Assistance Program;
- HUD Section 236 Interest Rate Subsidy Program;
- HUD Section 221(d)(4) FHA Insurance Program;
- HUD Section 202 Housing Program for Elderly Households;
- HUD Section 811 Housing Program for Disabled Households;
- McKinney-Vento Homeless Assistance Programs;
- USDA Section 515 Rural Housing Programs;
- Federal Low-Income Housing Tax Credits; and
- Other comparable state and local affordable housing programs.

Notably, the proposal enumerates that Duty to Serve credit would be provided for activities related to purchasing loan pools from small banks, credit unions, and community-based lenders on small multifamily rental properties of 5 to 50 units. The proposal specifically defines which purchases and securitization of loan pools from credit unions would meet this definition. Section 1282.1 of the proposed rule would define credit unions that are a qualified "community financial institution" in accordance with the definitions in FHFA's regulation on Federal Home Loan Bank membership. The credit union must be federally insured in accordance with the *Federal Credit Union Act*, whose total assets are less than \$1 billion, as adjusted annually by FHFA for inflation, with total assets being calculated as an average over the previous three years.

Furthermore, under the proposal, Fannie Mae and Freddie Mac would also be required to consider undertaking Regulatory Activities that support preserving affordable homeownership for single-family properties under shared equity programs that are administered by a community

land trust, a nonprofit organization or a state or local governmental agency. FHFA also proposes allowing credit to be given for purchasing energy efficiency retrofit loans on multifamily rental properties and single-family properties with Fannie Mae or Freddie Mac first mortgage liens.

Rural Housing

The Enterprises would be required to evaluate their current activities in rural areas and identify opportunities to increase those activities. This evaluation could include the Enterprises' working through federal and state programs and with local stakeholders to address liquidity needs in rural markets. In particular, Duty to Serve credit would be provided for activities to serve “rural areas,” which is defined by the proposal as (1) a census tract outside of a Metropolitan Statistical Area (MSA) as designated by the Office of Management and Budget (OMB), or (2) a census tract in an MSA, but outside of the MSA’s Urbanized Areas and Urban Clusters, as designated by the U.S. Department of Agriculture (USDA). In developing the current proposal, FHFA considered several criteria in developing a “rural area” definition, but decided on a definition that they believe will provide the broadest application to cover more rural areas and the most stability over the three-year term of the Plan. *See* 80 FR 79207.

Duty to Serve credit would also be provided for Regulatory Activities supporting housing in high-needs rural regions, defined as Middle Appalachia, the Lower Mississippi Delta region, and colonias, which are defined as communities located primarily within 150 miles of the U.S.-Mexico border in Arizona, New Mexico, Texas, and California. Credit would also be given for activities to support housing for high-needs rural populations defined as members of federally recognized Native American tribes and migrant or seasonal agricultural workers.

This document is intended for informational purposes only. It does not constitute legal advice. If such advice or a legal opinion is required, please consult with competent local counsel.

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NAFCU'S 2015 REGULATORY ALERTS

Number	Topic	Date Issued
15-EA-01	CFPB: Amendments to Mortgage Servicing under TILA/RESPA	1/20/15
15-EA-02	NCUA-RBC2	1/21/15
15-EA-03	NCUA: EGRPRA Part 2	1/26/15
15-EA-04	NCUA: Capital Planning and Stress Testing Amendments	2/3/15
15-EA-05	CFPB: Small Creditor Exemption Adjustments	2/12/15
15-EA-06	NCUA: Small Entity Definition	3/9/15
15-EA-07	NCUA: Fixed Assets	3/31/15
15-EA-08	CFPB: Credit Card Market Review	3/31/15
15-EA-09	NCUA: 2015 Regulatory Review	5/5/15
15-EA-10	NCUA: Share Insurance	5/14/15
15-EA-11	FASB: Store-Valued Gift Card Accounting	5/19/15
15-EA-12	CFPB: Payday Lending	5/27/15
15-EA-13	CFPB: Request For Information On Student Loan Servicing	5/27/15
15-EA-14	DOE: Student Accounts Proposal	5/28/15
15-EA-15	NCUA: EGRPRA Part 3	7/1/15
15-EA-16	NCUA: Member Business Lending	7/6/15
15-EA-17	DOL: Minimum Wage & Overtime Pay	8/5/15
15-EA-18	NCUA: Bank Notes	10/22/15
15-EA-19	CFPB: Arbitration	11/10/15
15-EA-20	NCUA: Field of Membership	12/2/15
15-EA-21	NCUA - EGRPRA Part 4	12/29/15
15-EA-22	FHFA: Duty to Serve	12/30/15

NAFCU'S 2015 FINAL REGULATIONS

Number	Topic	Date Issued
15-EF-01	CFPB: TILA/RESPA Amendments	2/4/15
15-EF-02	CFPB: Disclosure to Consumer Complaint Narratives	4/8/15
15-EF-03	CFPB: Temporary Suspension of the Submission of Credit Card Agreements	4/22/15
15-EF-04	NCUA: Associational Common Bonds	5/11/2015
15-EF-05	NACHA Same Day ACH	5/29/15
15-EF-06	NCUA: Loans in Areas Having Special Flood Hazards	6/30/15
15-EF-07	Interagency: Policy Statement on Joint Standards for Diversity Policies & Practices	7/2/15
15-EF-08	FFIEC's Cybersecurity Self-Assessment Tool	7/9/15
15-EF-09	CFPB: TILA-RESPA Integrated Disclosures Delay	7/30/15
15-EF-10	NCUA: Fixed Assets	8/3/15
15-EF-11	DoD: Military Lending Act	8/4/15
15-EF-12	NCUA: Small Entity Definition	9/25/15

15-EF-13	NCUA: Civil Monetary Penalty Inflation Adjustment	9/29/15
15-EF-14	CFPB: Small Creditor Exemption Adjustments	10/6/15
15-EF-15	NCUA: Prompt Corrective Action – Risk Based Capital	10/21/15
15-EF-16	NCUA: Delegation of Community Charter Amendments	10/22/15
15-EF-17	CFPB: HMDA (Regulation C)	10/28/15
15-EF-18	DOE: Student Accounts	11/5/15