



REQUEST FOR INPUT ON FANNIE MAE'S
PROPOSED MODIFICATION TO THE RURAL
LIHTC INVESTMENTS OBJECTIVE FOR 2023 IN
ITS DUTY TO SERVE PLAN

June 2023



Division of Housing Mission and Goals

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Introduction

The Federal Housing Finance Agency (FHFA) requests public input on a proposed modification by Fannie Mae to the rural Low-Income Housing Tax Credit (LIHTC) investment objective for 2023 in its 2022-2024 Duty to Serve (DTS) Underserved Markets Plan (Plan).

Background

The Housing and Economic Recovery Act of 2008 amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 to establish a duty for Fannie Mae and Freddie Mac (the Enterprises) to serve three specified underserved markets—manufactured housing, affordable housing preservation, and rural housing—by increasing the liquidity of mortgage investments and improving the distribution of investment capital available to facilitate a secondary market for residential financing for very low-, low-, and moderate-income families in those underserved markets.¹

FHFA’s DTS regulation, which implements the statutory provisions, requires the Enterprises to prepare Plans detailing the specific objectives and activities they plan to implement to fulfill the DTS mandate.² The Enterprises’ 2022-2024 Plans went into effect on January 1, 2022. The DTS regulation allows an Enterprise to request to modify its Plan at any time. FHFA and the Enterprises may seek public input on the proposed modifications if FHFA determines that public input would assist its consideration of the proposed modifications.³ FHFA must provide a Non-Objection to a proposed modification for it to become part of a Plan.⁴

Fannie Mae has submitted to FHFA a request for a modification to the LIHTC investment objective in the rural housing market for the 2023 Plan year. FHFA has determined that public input would assist FHFA in considering the proposed modification and accordingly is issuing this request for input. The Plan modification review process established pursuant to Chapter 1 of FHFA’s DTS Evaluation Guidance is described below. The review process is intended to enable the Enterprises and FHFA to apply lessons learned and improve the Plans in an expeditious manner, while also providing transparency to the public about substantial changes to the Plans.

¹ 12 U.S.C. 4565.

² 12 CFR 1282.32.

³ 12 CFR 1282.32(h).

⁴ *Id.*



Overview of Modification Process

As the Enterprises continue to implement the DTS program, FHFA has found that it is a best practice for the Enterprises to assess their Plans and propose modifications to those Plans, where appropriate, on an annual basis. While modifications are allowed under FHFA's regulation and Evaluation Guidance, they are not a required part of the DTS process.

A proposed Plan modification should include a sufficient basis and explanation for why the modification is appropriate. FHFA has advised the Enterprises to use a "Plan Modification Request" form to request and justify a proposed modification.

The standards for FHFA's Non-Objection determination for modifications are as follows:⁵

1. The concept score, reflecting the expected level of impact of an objective, for each objective in the underserved market over the three-year period of the Plan is 30 or higher (out of 50); and
2. The modified underserved market section of the Plan must continue to include at least the required minimum number of activities with at least one loan purchase objective applicable to the specific year of the Plan for that market.

The DTS regulation provides that proposed modifications will be subject to public input "if FHFA determines that public input would assist its consideration of the proposed modifications."⁶ FHFA has discretion to determine which proposed modifications will be subject to public input.

To help the Enterprises and the public understand how FHFA uses its discretion in deciding when to seek public input on modification requests, FHFA has identified the following examples of modification requests for which FHFA is more likely to seek public input:

- Reducing a quantitative target by 40 percent or more, especially when that reduction is not accompanied by a change in the historical baseline for that action; and
- Eliminating an objective entirely.

FHFA has identified the following examples of modification requests for which FHFA is not likely to seek public input:

⁵ See Evaluation Guidance 2022-6.

⁶ 12 CFR 1282.32(h).



- Changing a historical baseline or numerically measurable target due to a miscalculation – in light of the wide variety of activities in the Plans, it is conceivable that the Enterprises and FHFA may disagree about how to conceptualize or count certain metrics, such as the number of units eligible for DTS credit under a certain activity. As FHFA and the Enterprises reconcile these discrepancies, an Enterprise may need to change its baseline or target accordingly; and
- Modifying the measurable quantity of an objective by a modest amount, which FHFA deems to be an increase or decrease of less than 10 percent.

After considering the public input received on this request for input, FHFA will issue a Non-Objection to Fannie Mae's proposed modification, if appropriate, by December 31, 2023. Upon the issuance of a Non-Objection, FHFA intends to publish the following documents on FHFA's public website, with any confidential and proprietary information omitted:

- The complete modified Plan Fannie Mae submitted that received a Non-Objection from FHFA;
- A redlined version of the portions of the modified Plan containing all modifications, including technical edits;
- Fannie Mae's completed "Plan Modification Request" form for the proposed modification that received a Non-Objection from FHFA. This document will be published to provide the public with insight into the reasons Fannie Mae modified its Plan.

Proposed Modification to Fannie Mae's Plan for 2023

Rural Housing

Additional Activity: Invest in Low-Income Housing Tax Credit (LIHTC) properties to facilitate the provision of affordable multifamily housing in rural areas, Objective # 1 (FN_Rural_LIHTC_1): Invest in LIHTC properties in rural areas.

Proposed Modification:

Fannie Mae's initial baseline for its 2023 Plan year was 59 rural LIHTC investments, and the initial target for its 2023 Plan year was to make 70 rural LIHTC investments. As discussed in further detail in Fannie Mae's attached proposed modification request, Fannie Mae's proposed modification for the 2023 Plan year would change and recalculate the baseline and target due to a material change in market conditions that is preventing Fannie Mae from investing in rural



LIHTC properties through multi-investor funds. The proposed modified baseline for the 2023 Plan year would be 20 to 40 rural LIHTC investments.⁷ The proposed modified target for the 2023 Plan year would be 20 to 40 rural LIHTC investments.⁸

Input Questions on the Proposed Modification

To inform FHFA's consideration of Fannie Mae's proposed Plan modification, FHFA requests input from all interested parties on the following:

1. What is the proposed modification's potential impact on the rural LIHTC investments objective in the Plan and on the rural housing market as a whole?
2. What market conditions should FHFA consider related to the proposed modification?
3. What additional information might be helpful in evaluating the proposed modification?
4. Is the proposed modification appropriate based on the information and justifications provided by Fannie Mae? If not, why not?
5. Is there any other feedback on the proposed Plan, as modified, that FHFA should consider?

The proposed modification includes a title, which identifies the Enterprise, applicable underserved market, Activity, and Objective number. **Please use this title in your response.** Responses should be as specific as possible when referring to the Activity and Objective.

The "Plan Modification Request" form submitted by Fannie Mae for the proposed modification that is the subject of this request for input is included to provide the public with Fannie Mae's justifications for its proposed modification. For more background information, see Fannie Mae's Plan, which is posted on the DTS program homepage on the FHFA website.

Public Input Instructions

FHFA will accept public input on this request for input no later than July 21, 2023. Submissions may be delivered by one of the following two ways:

⁷ The proposed modified baseline for the 2023 Plan year is based upon the number of rural LIHTC investments acquired by Fannie Mae through proprietary investment funds from 2021-2022, as well as rural LIHTC investments acquired by multi-investor funds that Fannie Mae committed to prior to 2023.

⁸ The proposed modified target for the 2023 Plan year reflects the shift in Fannie Mae's 2023 investment strategy to exclusively proprietary investor funds.



(1) Submitted to the DTS webpage at

<https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Duty-to-Serve.aspx>; or

(2) Addressed to Marcea Barringer, Supervisory Policy Analyst, Attention: Duty to Serve 2023 RFI, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW, Washington, D.C. 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

Submissions to FHFA will be publicly posted without change, including personal information such as name, street address, email address, and telephone number.



2023 Rural Housing

Additional Activity: Invest in Low-Income Housing Tax Credit (LIHTC) properties to facilitate the provision of affordable multifamily housing in rural areas (12 C.F.R. § 1282.35 (d)).

Objective # 1: Invest in LIHTC properties in rural areas.

Proposed Modification:

Change and recalculate baseline and target due to the tax-exempt controlled entity (TECE) issue (described below), which materially impairs our ability to achieve the objective. The baseline for plan year 2023 will be established based upon the number of rural LIHTC equity investments acquired through proprietary investment funds in the past two years, as well as rural LIHTC equity investments acquired by multi-funds that Fannie Mae committed to prior to 2023. The baseline for the 2023 plan year will be 20 to 40 investments. The target for the 2023 plan year will be 20 to 40 investments.

Given the ongoing challenges on the TECE issue, we will not be able to meet the initially projected 70 LIHTC investments in rural areas and are proposing this plan modification. The modified target for 2023 accurately reflects the necessary shift in our current investing strategy to exclusively proprietary investor funds.

Justification:

Our ability to invest in multi-investor funds has recently been prevented by a concern by a growing number of LIHTC equity market participants that Fannie Mae could be considered a tax-exempt controlled entity under the Internal Revenue Code, due to Treasury's ownership of our preferred stock. Other investors see this potential interpretation as a regulatory threat to their anticipated economic return, causing them to be unwilling to invest in multi-investor funds in which Fannie Mae is a member.

This TECE issue led us to cease multi-investor fund investment activity at the end of 2022. This cessation constitutes a change in market conditions that causes the existing baseline to be inapplicable in gauging our rural LIHTC equity investment objective and therefore requires a modification for the 2023 plan year. If this issue remains unresolved, it will also impact the 2024 plan year as well as LIHTC investment activities going forward.

Fannie Mae's multi-investor fund business model has been impactful because it allowed us to deploy more capital to more properties, greatly leveraging the impact of our investments. Our multi-investor fund activity can serve to encourage other investors, particularly smaller investors, to participate in LIHTC investments since they may feel more confident in a fund that includes Fannie Mae's participation. If unresolved, the TECE issue will require our future LIHTC equity investments in rural areas to be made only through proprietary fund investments, which will substantially reduce the number of LIHTC investments that can be made in rural areas.



E. Additional Activity: Invest in Low-Income Housing Tax Credit (LIHTC) properties to facilitate the provision of affordable multifamily housing in rural areas (12 C.F.R. § 1282.35 (d)).

The LIHTC program is a critical tool in creating and preserving affordable housing in the U.S. The affordable rural rental housing industry recognizes the LIHTC program as the most meaningful tool to develop and preserve affordable multifamily housing in underserved rural markets.

Projects supported by the LIHTC program placed nearly 10,000 low-income units in rural communities annually from 2005 – 2014. The non-metro share of all LIHTC projects placed in-service averages between 15% and 25%. Non-metro LIHTC projects have averaged between 40 and 45 units between 2005 and 2014.¹ LIHTC is prevalent in projects serving high-needs rural regions and populations and can be paired with the Loan Guarantee programs from USDA RD to obtain financing on rural properties. It is one of the few affordable rental housing programs to realize increased funding over the past few years.²

In 2018, Fannie Mae re-established our LIHTC investment business. We engaged with syndicator partners, developers, and HFAs to better understand the needs and challenges of rural properties relying on tax credits. We partnered with HAC to perform research on the effectiveness of the LIHTC program across the country. As a result, we provided significant equity investments to the development and preservation of affordable multifamily projects in rural markets.

1. Objective: Invest in LIHTC properties in rural areas.

Fannie Mae will invest in LIHTC properties in rural areas. Fannie Mae is committed to remaining a reliable and consistent source of equity.

Baseline: We have two distinct baselines for 2022 and for 2023, respectively. This distinction is driven by a material change in market conditions beyond Fannie Mae's control. Specifically, in the few years that Fannie Mae has been active in the LIHTC equity market, the large majority of its activity by property count has been through multi-investor fund investments, as opposed to proprietary fund investments. However, we no longer have the ability to invest in multi-investor funds due to a concern by a growing number of LIHTC equity market participants that Fannie Mae could be considered a tax-exempt controlled entity (TECE) under the Internal Revenue Code, due to Treasury's ownership of our preferred stock. Other investors see this possible interpretation as a regulatory threat to their anticipated economic return, causing them to be unwilling to invest in multi-investor funds in which Fannie Mae is a member. Due to these external circumstances outside of Fannie Mae's control, we were forced to cease our multi-investor fund investment activity at the end of 2022. If this issue remains unresolved it will also impact the 2024 plan year as well as LIHTC investment activities going forward. Our baseline for the 2022—2024 Plan cycle is 59 investments. The baseline number represents the average number of eligible rural LIHTC equity investments that Fannie Mae made in 2020 and 2021, which we believe are the two years most indicative of the current state of this business. Year-to-year investment activity measured in properties per calendar year will necessarily fluctuate driven both by uncertainties/slippage in calendar year closings of properties we have committed to as well as adjustments in the annual investment cap. However, these fluctuations, which result in irregular year-over-year activity, will not change the aggregate number of property investments or the impact to underserved markets they achieve. Despite the challenges in forecasting the precise timing of our investments, we expect to exceed the baseline of 59 for the next three years.

¹ Andrew M. Dumont, "Rural Affordable Rental Housing: Quantifying Need, Reviewing Recent Federal Support, and Assessing the Use of Low Income Housing Tax Credits in Rural Areas," Finance and Economics Discussion Series 2018-077, Board of Governors of the Federal Reserve System, July 19, 2018, doi.org/10.17016/FEDS.2018.077 (accessed April 24, 2020).

² Donna Kimura, "LIHTC Increase Included in Spending Bill," Affordable Housing Finance, March 22, 2018, housingfinance.com/policy-legislation/lihtc-increase-included-in-spending-bill_o (accessed April 24, 2020).



Rural LIHTC Equity Investments	2020	2021
Investments (all channels)	65	52

2023 Baseline

[Our baseline for 2023 is 20 – 40 investments. The baseline for plan year 2023 is based upon the number of rural LIHTC equity investments acquired through proprietary investment funds in the past two years, as well as the number of rural LIHTC equity investments acquired by multi-funds that Fannie Mae committed to prior to 2023.](#)

Rural LIHTC Equity Investments	2023
Investments (proprietary funds and multi-funds)	20 – 40

Year	Target and Implementation Steps	Evaluation Area
2022	Make equity investments in 78 LIHTC projects in rural areas. <ul style="list-style-type: none"> Plan and execute a balanced portfolio and investment strategy that effectively manages risk. Work with our syndicator partners to achieve the goal by investing equity in both proprietary and multi-investor funds. Continue industry engagement through a presence in key networks by exploring new relationships or expanding existing relationships. Maintain support for investments located in high-needs rural regions and high-needs rural populations when opportunities arise. 	Investment
2023	Make equity investments in 70 20 – 40 LIHTC projects in rural areas. <ul style="list-style-type: none"> Given the change in market conditions due to the TECE issue, we have directionally shifted from a multi-investor fund and proprietary fund strategy to proprietary fund only strategy. Evaluate portfolio and investment strategy based on lessons learned from 2022 and market conditions. Strengthen syndicator partnerships to achieve the goal by investing equity in proprietary funds. Continue industry engagement through a presence in key networks and explore new relationships or expand existing relationships, if feasible. Maintain support for investments located in high-needs rural regions and high-needs rural populations; when-if opportunities arise. 	Investment
2024	Make equity investments in 70 LIHTC projects in rural areas. <ul style="list-style-type: none"> Evaluate portfolio and investment strategy based on lessons learned from 2023 and market conditions. Continue to strengthen syndicator partnerships to achieve the goal by investing equity in proprietary funds. Continue industry engagement through a presence in key networks and explore new relationships or expand existing relationships, if feasible. Maintain support for investments located in high-needs rural regions and high-needs rural populations, when opportunities arise. 	Investment