

FEDERAL HOUSING FINANCE AGENCY

Questions and Answers on the Duty to Serve Program (12 CFR Part 1282, Subpart C)

Version 2021-1

This document sets forth answers prepared by Federal Housing Finance Agency (FHFA) staff in response to questions raised about the Duty to Serve program. The questions and answers constitute informal staff explanations or clarifications of certain provisions in FHFA's Duty to Serve regulation and Evaluation Guidance.

Scope of Regulation

Q1: What are the main elements of FHFA's Duty to Serve regulation and when did it become effective?

A1: The Duty to Serve regulation implements the duty under the Federal Housing Enterprises Finance Safety and Soundness Act of 1992, as amended (12 U.S.C. 4565), for Fannie Mae and Freddie Mac (collectively, Enterprises) to serve three specified underserved markets – manufactured housing, affordable housing preservation, and rural housing – 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. FHFA issued a final rule to implement the statutory requirements, effective January 30, 2017 (81 Fed. Reg. 96242 (Dec. 29, 2016)). The regulation specifies the scope of Enterprise activities that are eligible to receive Duty to Serve credit. The activities specified by the regulation generally are those that facilitate a secondary market for mortgages related to: manufactured homes; certain categories of manufactured housing communities; preserving the affordability of housing for renters and homebuyers; housing in high-needs rural regions or for high-needs rural populations; financing by small financial institutions of rural housing; and small rural multifamily rental properties. Each Enterprise is required to submit an Underserved Markets Plan (Plan) covering a three-year period¹ that describes the activities and objectives it will undertake in each underserved market to meet its duty to serve. The statute (12 U.S.C. 4565(d)(1)) requires FHFA to annually evaluate and rate the extent of the Enterprises' compliance with their duty to serve.

Q2: Does the Duty to Serve regulation or FHFA establish quantitative targets for loan purchases for Fannie Mae and Freddie Mac?

A2: No. The statute (12 U.S.C. 4565(d)(2)(C)) prohibits FHFA from establishing specific quantitative loan purchase targets for the Enterprises. FHFA provides input to the Enterprises on the proposed targets in their proposed Plans during the Plan drafting process, and the proposed targets are also

¹ The Enterprises' first three-year Plans covered January 2018 to December 2020. In response to the market disruption and uncertainty caused by the continued spread of coronavirus, FHFA postponed Enterprise submission of the next proposed three-year Plans, which would have covered January 2021 to December 2023 and directed the Enterprises instead to prepare Plans covering one year only (2021), as a one-year extension of their 2018-2020 Plans. Preparation of three-year Plans resumed with the Plan covering January 2022 to December 2024.

subject to public comment, but the final targets included in the Plans are determined by each Enterprise, subject to FHFA's Non-Objection.

Q3: Are the Enterprises required to undertake any specific activities in order to receive Duty to Serve credit?

A3: No. The Duty to Serve regulation (section 1282.32(d)(1)) does not mandate that the Enterprises engage in any particular activities for Duty to Serve credit. However, the regulation does require that the Enterprises consider and address in their Plans a minimum number of "Statutory Activities" and "Regulatory Activities" for each underserved market. "Statutory Activities" are activities related to certain federal affordable housing programs specified in the statute and comparable state or local affordable housing programs. "Regulatory Activities" are certain activities specified in the regulation that are not specifically included in the statute. The minimum number of Statutory Activities and Regulatory Activities is specified by FHFA in separate Evaluation Guidance. Each Enterprise selects the specific Statutory Activities or Regulatory Activities to address in its Plan. For the activities selected by an Enterprise, the Enterprise must address in its Plan either how it will undertake the activities and related objectives, or the reasons why it will not undertake the activities. The regulation (section 1282.32(g)(5)(iii)) also provides that FHFA may, in its discretion, designate in the Evaluation Guidance one Statutory Activity or Regulatory Activity in each underserved market that FHFA will significantly consider in determining whether to provide a Non-Objection to that market in an Enterprise's proposed Plan. In addition, the regulation (section 1282.32(d)(2)) permits an Enterprise to include in its Plan "Additional Activities" eligible to serve an underserved market, including addressing how it will undertake those activities and related objectives.

Duty to Serve Underserved Markets Plans

Q4: Are there opportunities for the public to provide input on the Enterprises' Plans?

A4: Yes. The regulation (section 1282.32(g)(3)) provides for an opportunity for public input on the Enterprises' proposed Plans. FHFA issues a Request for Input that solicits written public input on the proposed activities and objectives in the proposed Plans. FHFA also hosts public listening sessions that provide stakeholders with an opportunity to provide verbal input on the proposed Plans. The final Plans are posted on the Enterprises' and FHFA's respective websites, as required by the regulation (section 1282.32(g)(7)). In addition, the regulation (section 1282.32(h)) provides that FHFA and the Enterprises may, in their discretion, seek public input on proposed modifications to the Plans if FHFA determines that public input would assist its consideration of the proposed modifications.

Starting in 2019, FHFA also began hosting Duty to Serve public listening sessions, with each session focused on a different underserved market (manufactured housing, rural housing, and affordable housing preservation). These listening sessions provide stakeholders with an opportunity to provide feedback on the Enterprises' Plans, and are used to inform the Enterprises' development of their next Plans.

Stakeholders may also provide input to FHFA at any time on any aspects of the Duty to Serve program through the FHFA mailbox at DutyToServeStakeholders@fhfa.gov. More information about how to submit input is available on the Duty to Serve program [website](#).

Q5: Can the Enterprises modify their Plans?

A5: Yes, the regulation (section 1282.32(h)) provides that the Enterprises may request to modify their Plans, subject to FHFA's Non-Objection. FHFA may also, in its discretion, require an Enterprise to modify its Plan. As discussed in Q&A4, FHFA and the Enterprises may, in their discretion, seek public input on any proposed modifications to a Plan if FHFA determines that public input would assist its consideration of the proposed modifications.

Q6: How does FHFA monitor the Enterprises' progress toward meeting the activities and objectives in their Plans during the Plan year?

A6: FHFA monitors the Enterprises' performance under their Plans through review of quarterly and annual reports submitted by the Enterprises, as required by the regulation (section 1282.66).

Duty to Serve Evaluations and Ratings

Q7: How does FHFA evaluate whether the Enterprises are in compliance with their duty to serve each underserved market and their impact on such market?

A7: The regulation (section 1282.36) and separate Evaluation Guidance set forth the process and standards under which FHFA annually evaluates and rates each Enterprise's Duty to Serve performance under its Plan. FHFA uses the following three-step process, which is described in more detail in the [Evaluation Guidance](#):

- In Step One, FHFA calculates whether the Enterprise achieved each of the objectives it identified in its Plan.
- In Step Two, FHFA assesses the impact the Enterprise achieved in meeting the needs of the applicable underserved market, including by assigning an impact score for each Plan objective performed in that year.
- In Step Three, FHFA determines whether and how much extra credit to award for achievement of extra credit-eligible activities.

Following these three steps, FHFA assigns a rating for the Enterprise's compliance and impact for each underserved market.

Q8: How does FHFA measure the impact of Enterprise Duty to Serve actions on the underserved markets?

A8: Each year, FHFA rates the level of impact that each Enterprise's actions had on each underserved market using the following criteria, as further described in the Evaluation Guidance

(Appendix B): contribution to liquidity; extent of achievements relative to the baseline; level of effort in light of applicable market conditions; approach and design; contribution to knowledge about the underserved market; and contribution to future practice. To develop FHFA's determination of impact, subject matter experts review detailed narrative reporting, supporting documentation, and loan purchase or investment data, if applicable, from the Enterprises, as well as other sources of information. These reviews lead to an impact score of 10, 20, 30, 40, or 50 for each objective, with the most impactful actions receiving higher scores. Impact scores are subsequently rolled up to produce FHFA's market-level ratings.

Q9: Where can I find information on FHFA's annual evaluations and ratings of the Enterprises' Duty to Serve performance?

A9: Information on FHFA's annual evaluations and ratings of the Enterprises' Duty to Serve performance is available on the [Duty to Serve webpage](#) on FHFA.gov and in FHFA's [Annual Housing Report to Congress](#).

Q10: What are the consequences if an Enterprise fails to comply with its duty to serve an underserved market?

A10: Under the regulation (section 1282.40), if an Enterprise fails to comply with its duty to serve a particular underserved market in a given year (*i.e.*, receives a "Does Not Comply" rating for that market in its Plan), FHFA will determine whether performance of the activities and objectives in the Enterprise's Plan was feasible. In determining feasibility, FHFA will consider factors such as market conditions and the financial condition of the Enterprise. The regulation (section 1282.41) provides that if FHFA determines that compliance was feasible, FHFA may, in its discretion, require the Enterprise to submit to FHFA a housing plan to improve its performance.

Duty to Serve Activities and Objectives

Q11: Can an Enterprise receive Duty to Serve credit for a loan purchase under multiple Duty to Serve objectives in the same underserved market or in different underserved markets?

A11: Yes. FHFA's Evaluation Guidance provides that a single Enterprise loan purchase may qualify under multiple objectives within an underserved market. For example, an Enterprise loan purchase related to a multifamily property or unit may be eligible to receive Duty to Serve credit for loan purchase objectives under both the Low-Income Housing Tax Credit Statutory Activity and the Section 8 Statutory Activity in the affordable housing preservation market.

The DTS regulation (section 1282.37(h)) also provides that a single Enterprise loan purchase could count toward both a loan purchase objective under the Regulatory Activity for support for manufactured homes titled as real property in the manufactured housing market and a loan purchase objective under the Regulatory Activity for support of housing in high-needs rural regions in the rural housing market.

Q12: Will FHFA provide Duty to Serve credit for eligible activities completed by an Enterprise in the performance evaluation year but reported after the deadline for submitting its Duty to Serve annual report to FHFA?

A12: No. FHFA will not provide Duty to Serve credit for activities reported by an Enterprise to FHFA after the deadline for submitting its Duty to Serve annual report to FHFA. FHFA provides the Enterprises 75 days after the conclusion of the Plan year to report on any relevant Duty to Serve activities, which enables FHFA to begin conducting its annual evaluations of Enterprise Duty to Serve performance in mid-March.

LIHTC Equity Investments

Q13: Can the Enterprises receive Duty to Serve credit for LIHTC equity investments?

A13: Yes, but only in rural areas and subject to a funding cap. As discussed in the preamble to the final Duty to Serve rule (81 Fed. Reg. 96242, 96280-96281 (Dec. 29, 2016)), Enterprise LIHTC equity investments in rural areas are eligible for Duty to Serve credit subject to FHFA approval of the investments. In [December 2017](#), FHFA, acting as conservator, approved the Enterprises' limited re-entry into the LIHTC equity market. FHFA's approval included an annual cap of \$500 million in LIHTC equity investments per Enterprise. Within this funding cap, all LIHTC equity investments above \$300 million in a given year are required to be in Duty to Serve-defined rural areas, or must support particular types of transactions that have difficulty attracting investment. Duty to Serve credit is provided for Enterprise LIHTC equity investments in rural areas due to the lower share of LIHTCs invested in rural areas and the less advantageous pricing that LIHTCs in rural areas may command.

Housing in High-Needs Rural Regions

Q14: Under the Regulatory Activity for Enterprise activities supporting housing in high-needs rural regions (section 1282.35(c)(1)), how are "rural area" and "high-needs rural region" defined?

A14: The regulation (section 1282.1) defines "rural area" 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 as designated by OMB 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 for USDA's RUCA Code #2. The regulation (section 1282.1) defines a "high-needs rural region" as any of the following regions provided it is located in a rural area: (i) Middle Appalachia; (ii) the Lower Mississippi Delta; (iii) a colonia; or (iv) a tract located in a persistent poverty county and not included in Middle Appalachia, the Lower Mississippi Delta, or a colonia.

For purposes of the Duty to Serve, the tracts and counties that qualify as high-needs rural regions at the start of the Plan cycle are fixed for the duration of the Plan cycle. During the course of the Plans, the areas that meet the definition of high-needs rural regions may change due to changes in development patterns and population density. Any such changes become effective in the subsequent Plan cycle. Duty to Serve downloadable data, interactive maps, and DTS data definitions can be found on the [Duty to Serve Data and Tools Page](#).

Financing by Small Financial Institutions of Rural Housing

Q15: Under the Regulatory Activity for Enterprise activities supporting the financing by small financial institutions of rural housing (section 1282.35(c)(3)), do small financial institutions include mortgage banks?

A15: No. The definition of “small financial institution” in the regulation (section 1282.1) is a financial institution with less than \$304 million in assets. The definition is intended to focus the Enterprises’ Duty to Serve efforts on small rural depository institutions and community development financial institutions, not non-depository mortgage banks. Accordingly, Enterprise activities supporting the financing of rural housing by mortgage banks are not eligible for Duty to Serve credit under this Regulatory Activity.

Financing of Small Multifamily Rental Properties Under the Affordable Housing Preservation Market

Q16: Under the Regulatory Activity for Enterprise activities supporting the financing of small multifamily rental properties by entities with total assets of \$10 billion or less, do such entities include mortgage banks?

A16: No. The regulation (section 1282.34(d)(1)) provides that Enterprise activities that support the financing of small multifamily rental properties by “a community development financial institution, insured depository institution, or federally insured credit union, where the entity’s total assets are \$10 billion or less,” are eligible for Duty to Serve credit. These three types of financial institutions are separately defined in section 1282.1, and mortgage banks do not meet any of those definitions. Accordingly, Enterprise activities that support the financing of small multifamily rental properties by mortgage banks are not eligible for Duty to Serve credit under this Regulatory Activity.

Residential Economic Diversity Activities

Q17: For residential economic diversity activities supported by the Enterprises, how is “residential economic diversity” defined for purposes of receiving Duty to Serve extra credit?

A17: The regulation (section 1282.1) defines “residential economic diversity” as the development of affordable housing in high-opportunity areas or mixed-income housing in areas of concentrated poverty. The terms “high-opportunity area,” “mixed-income housing,” and “area of concentrated poverty” are separately defined in section 1282.1. The goal of residential economic diversity is to decrease concentrated levels of poverty. The regulation (section 1282.36(c)(3)) provides that FHFA may provide Duty to Serve extra credit for extra credit-eligible residential economic diversity activities included in an underserved market in an Enterprise’s Plan.

Shared Equity Programs for Affordable Homeownership Preservation

Q18: Under the Regulatory Activity for Enterprise support for shared equity programs for affordable homeownership preservation, what types of shared equity programs are eligible for Duty to Serve credit?

A18: Under the regulation (section 1282.34(d)(4)), eligible shared equity programs must be either: (1) resale restriction programs administered by community land trusts, other nonprofit organizations, or state or local governments or instrumentalities; or (2) shared appreciation loan programs administered by an above-referenced entity that may or may not partner with a for-profit institution to invest in, originate, sell, or service shared appreciation loans. Additionally, eligible shared equity programs must: (1) promote homeownership opportunities to very low-, low-, or moderate-income households; (2) preserve affordability for subsequent very low-, low-, or moderate-income households for at least 30 years through legal mechanisms; and 3) support homebuyers and homeowners to promote sustainable homeownership, including reviewing and pre-approving refinances and home equity lines of credit.

Manufactured Housing Communities with Certain Tenant Pad Lease Protections

Q19: Under the Regulatory Activity for Enterprise support for manufactured housing communities with certain tenant pad lease protections, what are the minimum tenant pad lease protections that a manufactured housing community must provide for Enterprise support of that community to receive Duty to Serve credit?

A19: Under the regulation (section 1282.33(c)(4)), the manufactured housing community must provide the following eight tenant pad lease protections, at a minimum:

- One-year renewable lease, unless there is good cause for nonrenewal;
- Thirty-day written notice of rent increases;
- Five-day grace period for rent payments and right to cure defaults on rent payments;
- Tenant has the right to sell the manufactured home without having to first relocate it out of the community;
- Tenant has the right to sublease or assign the pad lease for the unexpired term to the new buyer of the tenant’s manufactured home without any unreasonable restraint;
- Tenant has the right to post “For Sale” signs;
- Tenant has the right to sell the manufactured home in place within a reasonable time period after eviction by the manufactured housing community owner; and
- Tenant has the right to receive at least 60 days advance notice of a planned sale or closure of the manufactured housing community.

Duty to Serve and Enterprise Housing Goals

Q20: Does the Duty to Serve regulation interrelate with the Enterprise housing goals regulation (12 CFR Part 1282, Subpart B)?

A20: The Duty to Serve requirements and the housing goals for the Enterprises are separate statutory requirements that are part of the Enterprises' public purpose missions. The objective of both sets of requirements is to facilitate a secondary market for mortgages on properties that serve lower-income families. However, the requirements are established in different ways under the statute. Under the housing goals statutory provisions, FHFA is required to establish specific numeric loan purchase or unit goal targets for Enterprise loan purchases supporting mortgages on housing that is affordable to very low- and low-income families. In contrast, the Duty to Serve statute (12 U.S.C. 4565(d)(2)(C)) prohibits FHFA from setting specific quantitative loan purchase targets. The Duty to Serve statutory provisions require FHFA to establish a manner for evaluating whether, and the extent to which, the Enterprises have complied with the duty to serve each of three specified underserved markets by facilitating a secondary market for mortgages for very low-, low-, and moderate-income families. Under the Duty to Serve regulation implementing the statute, the Enterprises must establish their own measurable objectives for serving very low-, low-, and moderate-income families in the underserved markets, subject to FHFA's Non-Objection.