Duty to Serve Rulemaking
Proposed Rule (80 Federal Register 79182 (Dec. 18, 2015))

Roundtable Between the Federal Housing Finance Agency (FHFA) and Consumer, Civil Rights, Affordable Housing and Energy Efficiency Stakeholder Groups
April 20, 2016
Constitution Center, 400 7th St., S.W., Washington, D.C.
2:00 p.m. – 4:00 p.m. Eastern Standard Time

Attendees (in-person):

FHFA staff: Lyn Abrams, Peter Brereton, Janell Byrd-Chichester, Matt Douglas, Jim Gray, Nina Griffith, Carrie Johnson, Stefanie Johnson, Sharon Like, Alfred Pollard, Mike Price, David Sanchez, Mitzie Smith-Mack, Dion Spencer, Eric Stein, and Danielle Walton

Laura Abernathy (National Housing Trust)
Marcea Barringer (NeighborWorks America)
Sarah Edelman (Center for American Progress)
Julia Gordon (National Community Stabilization Trust)
John Griffith (Enterprise Community Partners)
Toby Halliday (Stewards for Affordable Housing for the Future)
Ethan Handelman (National Housing Conference)
Philip Henderson (Natural Resources Defense Council)
Gerron Levi (National Community Reinvestment Corporation)
Liz Lopez, (Opportunity Finance Network)
Todd Nedwick (National Housing Trust)
Rob Randhava (Leadership Conference on Civil & Human Rights)
Shiv Rawal (Center for American Progress)
Lisa Rice (National Fair Housing Alliance)
Joe Rich (Poverty & Race Research Action Council)
Christian Robin (NeighborWorks America)
Doug Ryan (Corporation for Enterprise Development)
Kris Siglin (Housing Partnership Network)
Jorge Soto (National Fair Housing Alliance)
Emily Thaden (Grounded Solutions)
Elayne Weiss (National Low Income Housing Coalition)
Dafina Williams (Opportunity Finance Network)
Barry Zigas (Consumer Federation of America)
Mary Tingerthal (Minnesota Housing Finance Agency)

Summary: On April 25, 2016, FHFA staff identified above met with the above-referenced representatives of consumer, civil rights, affordable housing and energy efficiency stakeholder groups representing varied interests, in connection with FHFA's 2015 Duty to Serve (DTS) proposed rule. The purpose of this meeting was to provide the stakeholder attendees, who had previously submitted written public comments to FHFA on the proposed DTS rule, with an opportunity to discuss those comments, express their views on the comment letters submitted by others, or provide views on clarifying questions from FHFA regarding the comments. The following is a summary of the attendees' discussions at the meeting and reflects solely the views of the attendees as captured by FHFA staff. The term "Enterprise" refers to Fannie Mae or Freddie Mac.

Proposed DTS Underserved Markets Plans and evaluations

Attendees discussed views on the rule's proposals for Enterprise Underserved Markets Plans (Plans), FHFA evaluation and scoring of Enterprise performance under their Plans, and possible alternative approaches. Some attendees stated that Plan activities should not be assigned scoring points in Evaluation Guides, and total scoring points should not be translated into overall ratings, as proposed. They suggested that the number of overall rating categories be expanded from the proposed four categories to five categories. They indicated that the focus of the DTS should not be on the Enterprises' achieving points assigned to each Plan activity, but rather on Enterprise innovation in supporting the underserved markets.

A smaller number of attendees stated that numeric benchmarks must be included in the Plans, and that Plan objectives should be tied to a needs analysis in addition to market opportunities.

Some attendees stated that the loan purchase assessment factor is the most important assessment factor in evaluating the Enterprises' performance.

Several attendees said that FHFA should remain very engaged with the Enterprises throughout the Plan cycle, and consider meeting with the Enterprises' customers to assess if the Enterprises' initiatives are working. They also indicated that more comparative data is needed, for example, data that compares the secondary market to the primary market.

Most attendees expressed concern that the rule's proposed timeline for the development and completion of the Plans is too short.

Manufactured housing

Attendees discussed views on the role of the Enterprises in supporting financing of manufactured housing. The attendees supported the rule's proposal to provide DTS credit for Enterprise support for financing of manufactured housing titled as real estate. Some attendees opposed providing DTS credit for Enterprise support of financing of manufactured housing units titled as chattel on an unlimited basis, but supported an Enterprise chattel loans pilot program provided it was very carefully developed, possibly in partnership with certain HFAs, mission-driven manufactured housing communities, or community development financial institutions. Some attendees suggested that a rigorous evaluation accompany a chattel loans pilot program so that stakeholders could learn from the results.

Several attendees recommended that the Enterprises receive DTS credit for supporting financing of certain types of manufactured housing community blanket loans that are hard to originate. A number of attendees supported the rule's proposed Regulatory Activities for manufactured housing communities with tenant pad lease protections, and for government/nonprofit/resident-owned manufactured housing communities. Attendees cited their long-term sustainability, strong tenant pad lease protections, and strong underwriting standards.

Several attendees opposed making small manufactured housing communities (150 pads or less) a Regulatory Activity because small communities are not that much harder to serve and the Enterprises might choose this activity over other, harder to serve activities.

Several attendees said that DTS credit should be given for Enterprise technical assistance and research to help fill the significant gaps in manufactured housing data and inform underwriting and appraisals.

Some attendees recommended that DTS credit be provided for Enterprise investments in community development financial institutions for single-family and multifamily manufactured housing.

Energy efficiency

Attendees discussed views on the rule's proposals for providing DTS credit for Enterprise support of financing for energy efficiency improvements on multifamily and single-family, first-lien properties. Attendees supported inclusion of energy efficiency in the proposed rule, but some attendees opposed the proposed requirement that the lenders determine before the closing of an energy improvement loan that there are verifiable projections that the proposed energy improvements will likely reduce energy and water consumption and utility costs. Some attendees said that lenders should have flexibility to adapt to the types of programs they are providing, citing the diversity of multifamily housing stock. They said that the rule should not require any specific types of audit protocols for energy efficiency, which will depend on the product offered. It was noted that energy audits can be very costly.

Several attendees suggested that DTS credit be awarded for Enterprise support of energy efficiency research, which they said would inform product design and eligibility decisions. Some attendees said it was important for the Enterprises to engage the industry to help with research and identify products that would increase energy efficiency and cost savings. Several attendees stated that homeowner energy savings are important to the operation of the property, and that payoff periods only make sense if the owner can save money. Some attendees said that there is a difference between tenant and homeowner energy savings, and that reducing expenses for the owners of multifamily rental buildings is very important and should be included in the rule.

Low-Income Housing Tax Credits (LIHTCs)

Attendees discussed views on the Enterprises' LIHTC role and whether DTS credit should be provided for Enterprise LIHTC activities. Attendees had differing views on the appropriateness and extent of Enterprise investment in LIHTCs. Some attendees recommended that the Enterprises be permitted to have a presence in the LIHTC market in order to be able to serve a countercyclical function should the market change in the future.

Other attendees stated that there should be a public purpose for the Enterprises' investments in LIHTCs, such as Enterprise support for LIHTCs in high-needs areas or for supporting other unmet needs if the Enterprises can make a compelling case for them. Other attendees took a different view and said that the only limitation on Enterprise investment authority in LIHTCs should be volume caps, which some attendees said should be small in order to avoid Enterprise competition with banks purchasing LIHTCs to meet Community Reinvestment Act requirements.

Still other attendees stated that DTS credit was not needed for Enterprise investments in LIHTCs because there is no lack of LIHTC investment by other parties, and if LIHTC investments were permitted by FHFA, the Enterprises would invest in them on their own initiative without DTS incentives.

Other Investments

Some attendees stated that the Enterprises could play a role in tax-exempt bonds for multifamily housing financing by either purchasing or guaranteeing the bonds and that they should receive DTS credit for this activity. A number of attendees said that FHFA should direct the Enterprises to invest in funds or pools that are focused on riskier properties, provided plans are in place to mitigate the risks.

Residential Economic Diversity

Attendees discussed views on the rule's proposal to provide extra DTS credit for Enterprise support for financing of residential economic diversity activities, which the rule defined as affordable housing in high opportunity areas, or mixed-income housing in areas of concentrated poverty. There were differing views on how to approach residential economic diversity. Some attendees recommended that Enterprise support for such activities be mandatory rather than receive extra DTS credit on the basis that the Enterprises have a duty to affirmatively further fair housing. Other attendees opposed including residential economic diversity activities as a DTS Regulatory Activity. Some attendees asserted that providing extra DTS credit for residential economic diversity activities could affect the extent to which the Enterprises engage in the statutory affordable housing preservation program activities.

Some attendees said that the proposed definition of "high opportunity area," for purposes of DTS residential economic diversity, which is an area designated by the Department of Housing and Urban Development (HUD) as a Difficult Development Area (DDA), has limitations but is a reasonable proxy for high opportunity areas. A number of attendees stated that the definition of "high opportunity area" should be more broadly defined because it does not include certain areas that should be included. Other attendees suggested a different approach -- that the proposed definition should be modified to include low-poverty census tracts, and that FHFA should consider using state definitions as well as definitions tied to state Qualified Allocation Plans (QAPs). However, some attendees opposed the use of QAPs in the definition due to their vagueness, variations among states, and court challenges under the Fair Housing Act in some states.

Affordable Housing Preservation – New Construction

Attendees discussed views on whether affordable housing “preservation” should be defined to include newly constructed housing and whether such housing should receive DTS credit. Attendees had varying views on new construction as affordable housing preservation. Some attendees supported its inclusion only for newly constructed affordable properties with long-term restrictions of longer than 15 years. Others supported its inclusion only if the properties were located in neighborhoods experiencing gentrification pressures. Still others supported DTS credit for new construction only if it was for replacement units.

At least one attendee opposed new construction being considered preservation under any circumstances, stating that there is no lack of capital for new construction. Some attendees also said that the Enterprises should not take their attention away from preservation of existing properties to focus on new construction.

Neighborhood Stabilization

Attendees discussed views on Enterprise support for neighborhood stabilization activities. Several attendees said that the Enterprises’ role in distressed neighborhoods is particularly important now because there is no longer HUD funding for neighborhood stabilization programs. One attendee noted three distinct important roles the Enterprises play in neighborhood stabilization: housing stock steward, business capital provider, and credit provider. The attendee stated that the Enterprises could have a much greater impact on neighborhood stabilization if DTS credit were explicitly available for neighborhood stabilization activities.

One attendee spoke on behalf of a number of attendees saying that organizations working in neighborhood stabilization need access to capital, particularly rehabilitation and repair loan products. The attendee said that community development financial institutions and other sources of capital could be encouraged to get involved in the single-family housing needs of these neighborhoods and that engagement from the Enterprises could provide momentum in this area.

Most attendees stated that the Enterprises should maintain and market their real estate-owned (REO) properties according to high quality standards. They said that if the REO is not maintained, it will negatively impact the neighborhoods and hurt organizations’ stabilization efforts in those neighborhoods.

Housing Counseling

Attendees discussed views on Enterprise support for housing counseling. Some attendees recommended that the rule include housing counseling in all activities eligible for DTS credit because it promotes successful, affordable homeownership.

One attendee recognized the value of housing counseling but said that it should not be required to be included in every DTS program because communities are in the best position to determine when and where counseling should be required. For example, one attendee stated that shared equity homeownership counseling is being done adequately when partnering with mortgage lenders.

Some attendees stated that housing counseling is a necessary element for a manufactured housing chattel lending program, as well as for all manufactured housing, noting that risks can be mitigated through housing counseling. They pointed out that there is little capacity for housing counseling in manufactured housing as most housing counseling programs lack a manufactured housing module. They noted that it could take some time to build such programs and the Enterprises should be involved in this. They also noted that rural residents do not have sufficient access to housing counseling.

Some attendees also supported permitting the Enterprises to make grants to support housing counseling, which they said should be carefully monitored.