

## **1 Overview**

### **1.1 The Housing and Economic Recovery Act of 2008**

The Housing and Economic Recovery Act of 2008 (“HERA”) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to establish a duty for the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, the “Enterprises”) to serve three specified underserved markets – manufactured housing, affordable housing preservation, and rural markets – 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<sup>1</sup> in those markets.

On December 13, the Federal Housing Finance Agency (“FHFA”) issued its Enterprise Duty to Serve Underserved Markets Final Rule, nearly a year after it issued its latest Proposed Rule.<sup>2</sup> The final rule is effective 30 days after the date of publication in Federal Register, which was December 29, 2016 (January 28, 2017).<sup>3</sup>

### **1.2 Eligible Manufactured Housing Finance Activities**

The final rule specifies the scope of Enterprise activities that are eligible to receive Duty to Serve credit. For the manufactured housing industry these activities generally are those that facilitate a secondary market for mortgages related to: (1) manufactured homes titled as real property,<sup>4</sup> (2) manufactured homes titled as personal property,<sup>5</sup> (3) manufactured housing communities owned by government units or instrumentalities, nonprofits, or residents;<sup>6</sup> and (4) manufactured housing communities with specified minimum tenant pad lease protections.<sup>7</sup>

## **2 Enterprise Underserved Market Plans**

### **2.1 Underserved Markets Plan**

Under the final rule, each Enterprise must prepare an Underserved Markets Plan (“Plan”) describing the specific activities and objectives it will undertake to fulfill its Duty to Serve obligations in each underserved market over a three-year period.<sup>8</sup> The final rule does not make any specific activity mandatory. Instead, the final rule establishes a set of procedures for the Enterprises to consider a range of activities for inclusion in their Plans and incentives for the Enterprises to include impactful activities in their Plans. Each Enterprise must not only describe in its Plan the activities it intends to engage in, but also why it decided not to include certain other

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<sup>1</sup> 12 U.S.C. § 4565(a). The terms “very low-income,” “low-income,” and “moderate-income” are defined in 12 U.S.C. § 4502.

<sup>2</sup> “Enterprise Duty to Serve Underserved Markets” 80 F.R. 79182 (December 18, 2015)

<sup>3</sup> 80 FR 96242.

<sup>4</sup> 12 C.F.R. § 1832.33(c)(1).

<sup>5</sup> 12 C.F.R. § 1282.33(c)(2).

<sup>6</sup> 12 C.F.R. § 1282.33(c)(3).

<sup>7</sup> 12 C.F.R. § 1282.33(c)(4).

<sup>8</sup> 12 C.F.R. § 1282.32(a).

activities in its Plan.<sup>9</sup> In determining whether to issue a Non-Objection where an Enterprise has chosen not to include the designated Statutory or Regulatory Activity in its Plan, FHFA will consider whether the Enterprise has made a convincing case in its Plan for not including it.<sup>10</sup>

In addition to the provisions described in the final rule, and in order to address implementation and operational questions that may arise, FHFA intends to release guidance from time to time as the Enterprises develop and execute their Plans. In addition, the Enterprises will be permitted to annually modify their Plans during the three-year cycle, subject to FHFA's Non-Objection.

## **2.2 Evaluation Guidance**

FHFA will prepare an Evaluation Guidance to be used by both Enterprises for their three-year Plans. The Evaluation Guidance will provide additional guidance on the Plans, how FHFA will conduct the quantitative, qualitative, and extra credit assessments, how final ratings will be determined, and other matters as appropriate. FHFA will provide the Enterprises with proposed Evaluation Guidance for the first Plan within 30 days after the posting of the final rule on FHFA's website (no later than January 12, 2017). The proposed Evaluation Guidance also will be posted to FHFA's website, and the public will have 120 days to provide input on the proposed Evaluation Guidance after its posting on the website. The public also will have an opportunity to provide input on each Enterprise's draft Plan.

## **2.3 Statutory, Regulatory and Additional Activities**

The final rule establishes three categories of "Activities" for the Enterprise Plans: Statutory Activities, Regulatory Activities and Additional Activities.<sup>11</sup> Only Regulatory Activities and Additional Activities are relevant for manufactured housing. 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, leaving to the Enterprises the decision on which specific Regulatory Activities to consider and address under this requirement.<sup>12</sup> The Enterprises may include as many Activities and related objectives in their Plans as they consider feasible. Any one activity may, but need not, serve more than one of the categories.

Rather than mandate Enterprise Activities, the final rule 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 underserved market in an Enterprise's proposed Plan.<sup>13</sup>

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<sup>9</sup> 12 C.F.R. § 1832.32(d)(1):

<sup>10</sup> FHFA December 13, 2016 Publication of Enterprise Duty to Serve Final Rule, p. 31.

<sup>11</sup> Additional Activities may include, for example, activities that support other federal, state, and local programs not specifically enumerated in the final rule that would benefit from Enterprise support. Any Additional Activities must be eligible under one of the three specified underserved markets as defined in this final rule. If an Enterprise chooses to include an Additional Activity in its Plan, the Enterprise must provide sufficient explanation in its Plan of how the Additional Activity will target an underserved segment of the market. In addition, an Enterprise must describe how the Additional Activity ensures that there are adequate levels of consumer protections or benefits to the tenants or homeowners that are consistent with the requirements of other Statutory and Regulatory Activities in the rule.

<sup>12</sup> 12 C.F.R. § 1282.32(d)(1).

<sup>13</sup> 12 C.F.R. § 1282.32(g)(5)(iii).

## 2.4 Plan Objectives

For each activity set forth in a Plan, the Plan must include one or more objectives, which are the specific action items that the Enterprises will identify for each activity. Objectives are central to FHFA's Duty to Serve evaluation process and ratings determinations. Objectives may cover a single year or multiple years. Each objective must meet all of the following requirements:

- Strategic. Directly or indirectly maintain or increase liquidity to an underserved market;
- Measurable. Provide measurable benchmarks, which may include numerical targets, that enable FHFA to determine whether the Enterprise has achieved the objective;
- Realistic. Calibrated so that the Enterprise has a reasonable chance of meeting the objective with appropriate effort;
- Time-bound. Subject to a specific timeframe for completion by being tied to Plan calendar year evaluation periods; and
- Tied to analysis of market opportunities. Based on assessments and analyses of market opportunities in each underserved market, taking into account safety and soundness considerations.

Each Plan objective must incorporate one or more of the following four statutory evaluation areas which are set forth in the final rule<sup>14</sup>:

- Outreach. The outreach evaluation area requires evaluation of “the extent of outreach [by the Enterprises] to qualified loan sellers and other market participants” in each of the three underserved markets. A Plan objective could describe how an Enterprise would engage market participants, such as through conducting meetings and conferences with current and prospective seller/servicers and providing technical support to seller/servicers, in order to accomplish a Plan activity. Market participants could include traditional participants in Enterprise programs, as well as non-traditional participants such as consortia sponsored by banks, nonprofit organizations, real estate developers, and state and local governments.
- Loan Product. The loan product evaluation area requires evaluation of an Enterprise's “development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each” underserved market.<sup>15</sup> A Plan objective could describe, for example, how the Enterprise will reevaluate its underwriting guidelines, which could include empirical testing of different parameters and modification of loan products in an effort to increase the availability of loans to families targeted by the Duty to Serve, consistent with safe and sound lending practices. FHFA expects the Enterprise to identify and assess current underwriting guidelines that may impede service to very low-, low-, and moderate-income families in the underserved markets.
- Loan Purchase. The loan purchase evaluation area requires FHFA to consider “the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the [E]nterprise.”<sup>16</sup> The Safety and Soundness Act further

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<sup>14</sup> 12 C.F.R. § 1282.36(b).

<sup>15</sup> 12 U.S.C. § 4565(d)(2)(A).

<sup>16</sup> 12 U.S.C. § 4565(d)(2)(C).

states that FHFA “shall not establish specific quantitative targets nor evaluate the [E]nterprises based solely on the volume of loans purchased.”<sup>17</sup> A Plan objective could include the Enterprise’s plans for purchasing loans in particular underserved markets, including its assessments and analyses of the market opportunities available for each underserved market and its expected volume of loan purchases for a given year.

- **Investments and Grants.** The investments and grants evaluation area requires evaluation of “the amount of investments and grants in projects which assist in meeting the needs of such underserved markets.” A Plan objective could include investments. As with all activities, the investments must comply with the Enterprises’ Charter Acts. FHFA has directed the Enterprises to refrain from making grants because they are in conservatorship. Accordingly, during the period of conservatorship, FHFA does not intend to provide Duty to Serve credit to the Enterprises for making grants.

Enterprise research and development activities will be eligible for Duty to Serve credit under the loan product or outreach evaluation areas because of their importance in encouraging innovation and creative solutions to the challenges that exist in the underserved markets.

Each objective will be eligible to receive Duty to Serve credit under only one evaluation area per year in an underserved market. This requirement is not intended to preclude or discourage the Enterprises from undertaking multi-faceted activities and objectives that take place over several years. Rather, the Enterprises will simply be required to identify one evaluation area for each objective during each year of a Plan cycle that reflects the Enterprise’s primary focus for the objective. In many instances, this may involve an Enterprise specifying separate objectives to cover actions relating to different evaluation areas. For example, a multi-faceted objective, such as one involving research and development, could foreseeably be assessed under outreach in year one of a Plan, and under loan products in year two of the Plan. FHA states that “Identifying the primary evaluation area for each objective, for each year, will focus Enterprise efforts and make it easier for FHFA and other stakeholders to evaluate their performance.”<sup>18</sup>

## **2.5 Evaluations and Ratings—12 C.F.R. § 1282.36**

HERA requires FHFA to establish, by regulation, a method for evaluating and rating the Enterprises’ compliance with the Duty to Serve underserved markets.<sup>19</sup> FHFA will evaluate Enterprise performance using a three-step process as follows: (1) a quantitative assessment; (2) a qualitative assessment; and (3) an assessment of any extra credit-eligible activities, including residential economic diversity activities, for extra Duty to Serve credit. Each of these steps will assess the Enterprise’s accomplishment of the objectives for the activities under each underserved market in its Plan. As part of the qualitative assessment, FHFA’s evaluation will incorporate an assessment of each Enterprise’s performance of its Plan objectives under one the following four evaluation areas – outreach, loan product, loan purchase, and investments and grants – as required by the statute. FHFA will publish an annual rating of each Enterprise’s performance under each of the underserved markets. At the end of each evaluation year, based on this three-step process, FHFA will assign one of the following five ratings for each underserved market in a Plan: Exceeds, High Satisfactory, Low Satisfactory, Minimally Passing, or Fails. FHFA will publicly report on its basis for assigning

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<sup>17</sup> *Id.*

<sup>18</sup> FHFA December 13, 2016 Publication of Enterprise Duty to Serve Final Rule, p. 25.

<sup>19</sup> 12 U.S.C. § 4565(d)(1).

each rating. As part of these annual evaluations, FHFA also will monitor the Enterprises' Duty to Serve activities on an ongoing basis.

### **2.5.1 Extra Credit-Eligible Activities, Including Residential Economic Diversity Activities**

As the third step of the evaluation and rating process, the final rule designates two categories of extra credit-eligible activities: (1) residential economic diversity activities, and (2) other activities that may be identified by FHFA as eligible for extra credit in the Evaluation Guidance. FHFA will establish the method and criteria for evaluating these extra credit-eligible activities in the Evaluation.<sup>20</sup>

#### **2.5.1.1 Residential Economic Diversity Activities**

The Enterprises may receive Duty to Serve extra credit, which may be factored into their evaluation ratings, if their qualifying activities within an underserved market in their Plans contribute to residential economic diversity. The final rule defines a "residential economic diversity activity" as an Enterprise activity in connection with mortgages on: (1) affordable housing in a high opportunity area; or (2) mixed-income housing in an area of concentrated poverty. The final rule allows Enterprise manufactured housing community activities to qualify for residential economic diversity extra credit, but only if the Enterprise is able to substantiate the affordability of homes in the manufactured housing community to very-low, low-, or moderate-income households through use of a methodology FHFA has approved.

### **2.5.2 Other Activities Identified in the Evaluation Guidance as Eligible for Extra Credit**

Activities such as serving high-needs rural populations or manufactured housing communities with tenant pad lease protections could foreseeably be designated as eligible for extra credit due to their challenging nature.

## **2.6 Timeline**

The final rule is effective 30 days after the date of publication in Federal Register. For the first Plan development cycle, FHFA posted the proposed Evaluation Guidance to the Enterprises on January 11, 2017. The public will have 120 days to provide input on the proposed Evaluation Guidance after its posting on the website (ends no later than May 12, 2017).<sup>21</sup> For the first Plan development cycle following the publication of the final rule, the Enterprises will be required to submit their proposed Plans to FHFA within 90 days after the posting of the proposed Evaluation Guidance on FHFA's website for public input (no later than April 12, 2017). The public input period for the first cycle of proposed Plans will be 60 days (ends no later than June 11, 2017).<sup>22</sup>

Each Enterprise may, in its discretion, make revisions to its proposed Plan based on public input.<sup>23</sup> For the first Plan development cycle following publication of the final rule, FHFA will review each Enterprise's proposed Plan, and within 60 days or such additional time as may be necessary from the end of the public input period, provide each Enterprise with FHFA's comments on its proposed Plan

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<sup>20</sup> 12 C.F.R. § 1282.36(c)(3).

<sup>21</sup> 12 C.F.R. § 1282.36(d)(3)(i)(B).

<sup>22</sup> 12 C.F.R. § 1282.32(g)(3)(i).

<sup>23</sup> 12 C.F.R. § 1282.32(g)(4).

(August 11, 2017). The Enterprises will be required to address FHFA's comments on their proposed Plans, as appropriate, through revisions to their proposed Plans pursuant to the timeframe and procedures established by FHFA.

The effective date of an underserved market in a Plan that has received a Non-Objection from FHFA by December 1 of the prior year will be January 1 of the first evaluation year for which the Plan is applicable. Where an underserved market in a Plan does not receive a Non-Objection by December 1 of the prior year, the effective date for that underserved market will be determined by FHFA.<sup>24</sup>

## **2.7 Tangible Benefits to Enterprises**

FHFA expects the Enterprises to show tangible results in each underserved market and to effectively facilitate mortgage lending to very low-, low-, and moderate-income families in each underserved market. Consistent with their charters, the Enterprises should expect mortgage purchases and activities pursuant to the Duty to Serve to earn a reasonable economic return, which may be less than the return earned on activities that do not serve these underserved markets.<sup>25</sup>

## **3 General Requirements for Duty to Serve Credit**

### **3.1 General Requirements for Loan Purchases**

To be eligible to receive Duty to Serve credit for loan purchases, a loan must be on housing affordable to very low-, low-, or moderate income families, regardless of whether the property is owner-occupied or rental.<sup>26</sup>

#### **3.1.1 No Credit Under Any Evaluation Area**

The final rule identifies specific Enterprise activities that are not eligible to receive Duty to Serve credit under any evaluation area:<sup>27</sup>

- Housing Trust Fund and Capital Magnet Fund contributions
- HOEPA Mortgages
- Subordinate liens on multifamily properties.
- Subordinate liens on single family properties.

#### **3.1.2 No Credit Under Loan Purchase Evaluation Area**

The final rule sets forth activities that are not eligible to receive Duty to Serve credit under the loan purchase evaluation area, even if the activity would otherwise receive credit under the general requirements.<sup>28</sup> These include generally:

- Mortgage purchases on secondary residences;
- Single-family refinancing mortgages resulting from conversion of balloon notes to fully amortizing notes if the Enterprise already owns the balloon note at the time conversion occurs;

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<sup>24</sup> 12 C.F.R. § 1282.32(g)(6).

<sup>25</sup> See 12 U.S.C. § 4513(a)(1)(B)(ii).

<sup>26</sup> 12 C.F.R. § 1282.38.

<sup>27</sup> 12 C.F.R. § 1282.37(b).

<sup>28</sup> 12 C.F.R. § 1282.37(d).

- Purchases of mortgages that previously received Duty to Serve credit within the immediately preceding five years;
- Mortgage purchases where the property or any units therein have not been approved for occupancy;
- Any interests in mortgages that FHFA determines will not be treated as interests in mortgages; and
- Purchases of state and local government housing bonds except as provided in 12 C.F.R. § 1282.39(h).

#### **4 Failure to Comply; Housing Plans—12 C.F.R. §§ 1282.40, 1282.41**

If an Enterprise has not complied with, or there is a substantial probability that an Enterprise will not comply with, the Duty to Serve a particular underserved market in a given year, FHFA will determine whether compliance by the Enterprise with the activities and objectives in its Plan is or was feasible. In determining feasibility, FHFA will consider factors such as market and economic conditions and the financial condition of the Enterprise.<sup>29</sup>

#### **5 Manufactured Housing Market**

The final rule establishes four Regulatory Activities for the manufactured housing market. The Regulatory Activities are for: (1) manufactured homes titled as real property, (2) manufactured homes titled as personal property, (3) manufactured housing communities owned by government units or instrumentalities, nonprofits, or residents; and (4) manufactured housing communities with specified minimum tenant pad lease protections. The final rule defines “manufactured home” to mean a home as defined in the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended<sup>30</sup> (“HUD Code homes”). Pre-HUD Code homes are not eligible collateral for loans sold to the Enterprises.

##### **5.1 Chattel: Loans on Manufactured Homes Titled as Personal Property**

The final rule establishes a new Regulatory Activity for Enterprise support for chattel loans<sup>31</sup> to improve liquidity and access to credit in the manufactured housing market generally and for very low-, low-, and moderate-income households.

FHFA will require the Enterprises to methodically assess ways to mitigate the risks and challenges of chattel lending before beginning any chattel loan purchases. Additionally, FHFA would also conduct a thorough review and assessment of any chattel loan pilot initiative, both when proposed by the Enterprise and, if approved, throughout its execution by the Enterprise. This review is a core part of FHFA’s regulatory responsibilities in overseeing all of the Enterprises’ Duty to Serve activities, but FHFA believes it is appropriate to emphasize this point for chattel lending since it would be a new purchase activity for the Enterprises.

##### **5.1.1 New Product Review**

Initially, only approved chattel loan pilot initiatives included in an Enterprise’s Plan would be eligible for Duty to Serve credit. Under an Enterprise Plan to pursue such a chattel loan pilot

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<sup>29</sup> FHFA December 13, 2016 Publication of Enterprise Duty to Serve Final Rule, p. 196.

<sup>30</sup> 42 U.S.C. § 5401 *et seq.*

<sup>31</sup> 12 C.F.R. § 1282.33(c)(2).

initiative, FHFA review of the pilot initiative would also be required under the new product and activities statute prior to any purchases by the Enterprise of chattel loans.<sup>32</sup> To facilitate a timely new product review, an Enterprise's Plan should indicate when the Enterprise expects to commence purchasing chattel loans as part of a pilot initiative prior to any purchases by the Enterprise of chattel loans.

FHFA will carefully assess a number of factors in reviewing any chattel loan pilot or ongoing initiative included in an Enterprise Plan. While the final rule does not contain pre-determined limitations on pilot chattel loan initiatives, FHFA could include such parameters in the Evaluation Guidance. For example, the final rule does not restrict the location of the manufactured homes (within or outside of a manufactured housing community), the volume of Enterprise chattel loan purchases, the duration of any initiative, or the Enterprises' counterparties. Nor does the final rule restrict the specific terms and features of an acceptable chattel loan product beyond those restrictions applicable to all single-family loan purchases. However, FHFA could address some of these parameters in the Evaluation Guidance, and FHFA also will consider them in determining whether to provide a Non-Objection to an Enterprises Plan for the manufactured housing market and for purposes of the new product review. In addition, FHFA will encourage, if not require, improving the chattel lending market through "standardization that includes borrower protections."<sup>33</sup>

### **5.1.2 Chattel Loan Purchase Critical Factors**

In reviewing any Enterprise Plan to pursue pilot chattel loan initiatives, FHFA will focus carefully on the financial performance of chattel loans, possible risk mitigants, and borrower and tenant protections.

#### **5.1.2.1 Access To Reliable Data About Chattel Loan Performance.**

As part of any Plan that includes chattel loan activities, FHFA expects that the Enterprises would work to develop better financial performance data both in preparation for a chattel loan pilot purchase initiative and through the implementation of the pilot itself.

#### **5.1.2.2 Risk Mitigants**

The FHFA enumerates "appropriate risk mitigants" to be incorporated into a pilot design: (1) limiting the volume or duration of the chattel loan pilot initiative; (2) tightening underwriting requirements for credit scores, down payments, loan-to-value ratios (LTV), debt-to-income ratios, and borrower reserves; (3) collateral mortgages on the land where homes are sited; (4) requiring lender repurchase obligations; (5) requiring lenders to retain a participation of at least ten percent in the loan to meet the requirements of the Enterprises' charter acts;<sup>34</sup> and (6) evaluating the financial strength of the counterparty.

#### **5.1.2.3 Borrower and Tenant Protections**

FHFA suggests a need for RESPA-like protections and mandatory housing counseling. FHFA expects that the Enterprises would seek feedback from stakeholder groups about how best to design the borrower and tenant protections for any chattel loan pilot initiative.

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<sup>32</sup> See 12 U.S.C. § 4541.

<sup>33</sup> FHFA December 13, 2016 Publication of Enterprise Duty to Serve Final Rule, p. 40.

<sup>34</sup> See generally 12 U.S.C. 1717(b)(1) (Fannie Mae Charter Act); 12 U.S.C. 1454(a)(1) (Freddie Mac Charter Act).



### **5.1.3 Preparations for Chattel Loan Purchases**

Enterprise research and development efforts must precede any purchases of chattel loans, including developing expertise, designing pilot parameters, reviewing potential counterparties, researching investors and securities structures, and developing appropriate borrower and tenant protections to be integrated as counterparty requirements. Enterprise counterparties would also need to be prepared to accurately report their chattel loan data and to adopt strong compliance and internal auditing standards. “Enterprise outreach to potential counterparties could count under the outreach evaluation area, and Enterprise research and development could count under the outreach evaluation area or the loan product evaluation area even where it does not result in actual purchases of chattel loans by the Enterprise.”<sup>35</sup>

### **5.1.4 Request for Information**

On January 11, 2017 FHFA issued a “Request for Information” (“RFI”) to the public on what an Enterprise should include in a chattel pilot initiative, if an Enterprise decides to pursue a pilot initiative. To assist in considering what might be an appropriate role for the Enterprises in the manufactured homes chattel loans market, FHFA requests input from interested parties on current manufactured homes chattel financing practices and on possible opportunities for the Enterprises — in a safe and sound manner — to improve chattel financing terms and conditions for very low-, low-, and moderate-income families through the Enterprises’ purchases of chattel loans. The RFI will conclude in time for the Enterprises to consider the input from the RFI in any chattel pilot initiative that may be included in an Enterprise’s draft Plan.

### **5.2 Manufactured Homes Titled as Real Property—12 C.F.R. 12 C.F.R. § 1282.33(c)(1)**

Except for the general requirements applicable to all single-family loan purchases, the final rule does not incorporate commenters’ specific suggestions regarding the terms and conditions for mortgages on real estate-titled homes purchased by the Enterprises. FHFA states that these suggestions are more appropriate to be raised by the commenters directly with the Enterprises during the development and implementation of the Enterprises’ Plans.

### **5.3 Manufactured Housing Communities—12 C.F.R. 12 C.F.R. § 1282.33(c)(3), (c)(4)**

The final rule establishes two Regulatory Activities in connection with Enterprise purchase of loans to community owners: (1) support for blanket loans on government-, nonprofit-, or resident-owned manufactured housing communities,<sup>36</sup> and (2) support for blanket mortgages on manufactured housing communities with minimum tenant protections in the pad leases.<sup>37</sup>

#### **5.3.1 Loans on Government-, Nonprofit-, Or Resident-Owned Manufactured Housing Communities**

FHFA has determined that making Enterprise support for manufactured housing communities owned by government units or instrumentalities, nonprofits, or residents eligible for Duty to Serve credit is consistent with the Enterprises’ Duty to Serve responsibilities because these types of communities typically serve lower-income residents, remain residential communities, promote fair treatment of tenants, and help preserve permanent affordability for their residents.

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<sup>35</sup> FHFA December 13, 2016 Publication of Enterprise Duty to Serve Final Rule, pp. 47 - 48.

<sup>36</sup> 12 C.F.R. § 1282.33(c)(3).

<sup>37</sup> 12 C.F.R. § 1282.33(c)(4).

### **5.3.2 Manufactured Housing Communities That Have Certain Specified Minimum Pad Lease Protections For Tenants**

The final rule authorizes Enterprise support for “blanket loans” on manufactured housing communities that have certain specified minimum pad lease protections for tenants:

- One-year renewable lease term unless there is good cause for nonrenewal;
- 30-day written notice of rent increases;
- 5-day grace period for rent payments, and the right to cure defaults on rent payments; and
- Right of tenants to:
  - (A) Sell the manufactured home without having to first relocate it out of the community;
  - (B) Sublease the home or assign the pad lease for the unexpired term to the new buyer of the tenant’s manufactured home without any unreasonable restraint;
  - (C) Post “For Sale” signs;
  - (D) Sell the manufactured home in place within a reasonable time period after eviction by the manufactured housing community owner; and
  - (E) Receive at least 60 days advance notice of a planned sale or closure of the manufactured housing community.

Communities in states where laws mirror these protections also are eligible for Duty to Serve credit. Manufactured housing communities located in jurisdictions with laws providing tenants with equal or greater protections than those specified in the rule is eligible for Duty to Serve credit must comply with those requirements. FHFA would take into consideration market competition and the relative difficulty of encouraging community owners to adopt these lease provisions in assessing Duty to Serve credit.

The final rule does not require sellers and servicers to oversee manufactured housing community owners’ compliance with the pad lease protections. Also, the final rule does not require that covenants in the blanket loan documents for the manufactured housing community provide that noncompliance by community owners with the pad lease protections constitutes an event of default. Instead, tenants would need to file private lawsuits to remediate any landlord noncompliance with the lease provisions.

### **5.3.3 Determining Affordability of Manufactured Housing Communities—12 C.F.R. 12 C.F.R. § 1282.38(f)**

Unless otherwise determined by FHFA, the affordability of homes in the community shall be determined using one of two methodologies, as applicable, as a proxy for the number of homes in the community that are affordable:

- (1) a methodology for government-, nonprofit-, or resident-owned communities; or
- (2) a census-tract methodology for any type of manufactured housing community.<sup>38</sup>

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<sup>38</sup> For purposes of determining extra Duty to Serve credit for residential economic diversity activities or objectives, the census track methodology may not be used.

## 6 Observations

The Enterprises should expect mortgage purchases and activities pursuant to the Duty to Serve to earn a reasonable economic return, which may be less than the return earned on activities that do not serve these underserved markets.

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, leaving to the Enterprises the decision on which specific Regulatory Activities to consider and address under this requirement. The final rule establishes four manufactured housing Regulatory Activities. However, it is unlikely that FHFA will mandate all four, leaving the Enterprises the option to decline to propose a chattel loan pilot. However, each Enterprise must not only describe in its Plan the activities it intends to engage in, but also why it decided not to include certain other activities in its Plan. MHI must continue its advocacy for a pilot by both Enterprises.

Chattel loan purchases are at least 3 years away: 1 year for Plan & New Product Approval, 1 year for outreach, and 1 year for product development.

Enterprise outreach to potential counterparties could count under the outreach evaluation area, and Enterprise research and development could count under the outreach evaluation area or the loan product evaluation area even where it does not result in actual purchases of chattel loans by the Enterprise.”

As promised in the Final Rule, on January 11, FHFA issued a “Request for Information.” To assist in considering what might be an appropriate role for the Enterprises in the manufactured homes chattel loans market, FHFA requests input from interested parties on current manufactured homes chattel financing practices and on possible opportunities for the Enterprises — in a safe and sound manner — to improve chattel financing terms and conditions for very low-, low-, and moderate-income families through the Enterprises’ purchases of chattel loans. The RFI will conclude in time for the Enterprises to consider the input from the RFI in any chattel pilot initiative that may be included in an Enterprise’s draft Plan.

Specifically, FHFA is seeking information on: sources of Chattel Loan Financing, Origination of Chattel Loans, Borrower and Tenant Protections, Credit Enhancements, Standardization, and Risk Sharing and Chattel Loan Servicing. The RFI will conclude in time for the Enterprises to consider the input from the RFI in any chattel pilot initiative that may be included in an Enterprise’s draft Plan. The questions posed by FHFA are detailed, and seek a substantial amount of data.

FHFA expects that the Enterprises would seek feedback from stakeholder groups about how best to design the borrower and tenant protections for any chattel loan pilot initiative.

FHFA notes that the Enterprises already have an infrastructure in place for purchasing and servicing mortgages on real estate-titled manufactured homes, apparently implying that purchasing loans secured by manufactured homes titled as real property would be a relatively risk free manner of earning Duty to Serve credit.