March 16, 2016

Mr. Alfred M. Pollock, General Counsel  
Attention: Comments/RIN 2590-AA27  
Federal Housing Finance Agency  
Eight Floor, 400 7th Street SW  
Washington, DC 20219

Re: Proposed Rule for Fannie Mae’s and Freddie Mac’s Duty to Serve Underserved Markets

To Whom It May Concern:

On behalf of Enterprise Community Partners, thank you for the opportunity to comment on the Federal Housing Finance Agency’s proposed Duty to Serve (DTS) rule for Fannie Mae and Freddie Mac (collectively the GSEs).

Enterprise works with partners nationwide to finance, build and advocate for affordable housing for low- and moderate-income families. Over the past 32 years, Enterprise has helped build or preserve more than 340,000 affordable homes across all 50 states, invested $18.6 billion into communities and touched millions of lives.

We are a family of companies comprised of Enterprise Community Partners (the parent nonprofit) and its related organizations: Enterprise Community Investment (a financial services company), Enterprise Community Asset Management (a multifamily asset management firm), Enterprise Community Loan Fund (a certified Community Development Financial Institution), Enterprise Homes (a housing developer) and Bellwether-Enterprise Real Estate Capital (a multifamily and commercial mortgage originator). Bellwether-Enterprise is a Fannie Mae Delegated Underwriting and Servicing (DUS) Lender and Multifamily Affordable Housing Lender, a Freddie Mac Program Plus Seller Servicer and Targeted Affordable Housing Lender, a FHA Multifamily Accelerated Processing (MAP) lender, a Ginnie Mae issuer and a U.S. Department of Agriculture Section 538 lender.¹

For more than three decades, the GSEs have been important partners in Enterprise’s work. The GSE multifamily businesses are particularly important sources of capital for affordable housing and essential components of a liquid, stable and affordable U.S. rental market. For this reason, we appreciate FHFA’s strategic priority of supporting “multifamily housing needs with a focus on the affordable and underserved segments of the market,” as laid out in the agency’s latest strategic plan.²

¹ For more information about Enterprise, visit www.EnterpriseCommunity.com.
FHFA’s commitment to affordable rental housing comes at a critical moment. Over the past decade, wages have stagnated for most low- and moderate-income workers while rents have steadily risen, resulting in an unprecedented affordable housing crisis. Today 11.4 million renter households—more than one in four renters in the U.S.—are “housing insecure,” meaning they pay more than half of their monthly income on housing. Absent meaningful changes to public policy, this problem will only get worse in the years to come. According to recent projections from Enterprise and the Harvard Joint Center for Housing Studies, even if rent growth matches income growth, the number of housing insecure renters is expected to grow by about 1.3 million households over the next decade—an increase of over 10 percent.

The DTS rule, along with the GSE affordable housing goals and contributions to the National Housing Trust Fund and Capital Magnet Fund, is an essential tool for addressing America’s growing rental housing crisis. We commend FHFA for proposing a planning, reporting and evaluation process that upholds the legislative intent of the Housing and Economic Recovery Act while providing the GSEs with flexibility to adjust to market conditions and other extenuating factors.

That said, we urge FHFA to take certain steps to strengthen and improve the proposed rule. Below we respond to specific questions posed by FHFA. We have organized our comments around the following core components of the DTS rule:

- Low-Income Housing Tax Credit (Housing Credit) investments by the GSEs
- Preservation of affordable rental housing supported through other federal, state and local programs
- Support to CDFIs and other small and community lenders
- Financing for the energy-efficient rehabilitation of multifamily housing
- Support for housing in rural areas
- Loans for manufactured housing
- Other questions in the proposed rule

Housing Credit Investments by the GSEs

Q41. Should FHFA allow the Enterprises to resume LIHTC equity investments? Would the resumption of LIHTC equity investments by the Enterprises benefit the financial feasibility of certain LIHTC projects or would it substitute Enterprise equity funding for private investment capital without materially benefiting the projects?

Enterprise supports allowing the GSEs to resume Housing Credit investments in a targeted and limited capacity. Prior to the most recent financial crisis, the GSEs provided roughly 40 percent

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of annual equity investments in properties supported with Housing Credits. These investments produced tens of thousands of affordable apartments each year, including many in underserved markets with little to no investment related to the Community Reinvestment Act (CRA). When the GSEs stopped investing in Housing Credits in 2007 and 2008, it left a significant gap in the market with severe consequences on pricing and liquidity. The market has since rebounded and is running smoothly today, especially in markets with strong demand for CRA-eligible investments. However, the Housing Credit market lacks a stable entity to keep money flowing into Housing Credit deals during future economic downturns, and certain segments of the market still experience relatively limited liquidity (see below).

Since a diversity of investors is essential for the long-term health of the Housing Credit market, it makes sense for FHFA to allow the GSEs to maintain a limited presence in the market. In addition, affordable housing advocates are calling for a significant increase in annual Housing Credit allocations, and participation by the Enterprises could help absorb an increase in the supply of credits seeking investors.

On the other hand, today the investor market for Housing Credits is robust, and large commitments by the GSEs in the near term could crowd out private capital. As such, we recommend that the GSEs enter the market at a modest level—regulated through a firm cap on annual equity investments by each company—with strong incentives through DTS to target underserved segments of the Housing Credit market. For example, FHFA could cap each GSE’s annual equity investments at 5 percent of total Housing Credit allocations for that year.

In addition, now that the GSEs benefit from an explicit government guarantee under conservatorship, FHFA should consider certain rules that encourage the GSEs to provide counter-cyclical support to the Housing Credit market. For example, FHFA could reserve the right to raise or eliminate the cap on GSE Housing Credit investments during future market downturns—when other private investors tend to scale back or leave the market entirely—and provide additional DTS credit for Housing Credit investments during that period.

Other rules could prevent sudden retreats from the market by the GSEs, such a requirement that FHFA approve any planned reduction in Housing Credit investments beyond a certain threshold—say, a reduction of more than 20 percent in a given year. In addition, FHFA could require each GSE to seek input from a National Advisory Council when developing its Housing Credit investment strategy and planning its support to specific underserved segments.

Q42. If FHFA allows the Enterprises to resume LIHTC investments, should FHFA limit investments to support for difficult to develop projects in segments of the market with less investor demand,

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6 For example, the 1,000-plus-member ACTION campaign is calling on Congress to expand annual allocations of Housing Credits by at least 50 percent to meet the growing need for affordable rental housing. For more information on the ACTION campaign, see: http://www.rentalhousingaction.org/files/ACTION%20Campaign%20Legislative%20Priorities.pdf.
such as projects in markets outside of the assessment areas of large banks or in rural markets or for preservation of projects with expiring subsidies? Are there other issues that FHFA should consider if limiting the types of LIHTC projects appropriate for equity investment by the Enterprises?

While we believe that GSE investments should focus on segments of the Housing Credit market that are not well served by equity investors today and historically, we do not believe that these investments need to be limited to those underserved segments. Since some of these investments could be perceived as riskier, the GSEs may also want to include Housing Credit investments in its portfolio that are perceived to be less risky, so the companies should be given appropriate flexibility to manage its Housing Credit portfolio.

That said, in an effort to limit the GSEs’ ability to crowd out other private investors, it makes sense for FHFA to cap their share of the overall Housing Credit market in a given year at a relatively modest level—say 5 percent per company. FHFA could also choose to exempt from the cap certain Housing Credit investments that are clearly underserved segments, similar to but more targeted than the exemptions for affordable housing loans in the GSE multifamily mortgage businesses.

Q43. If FHFA permits the resumption of LIHTC equity investments, should Duty to Serve credit be provided only for LIHTC equity investments in projects with expiring subsidies or projects in need of refinancing, or should Duty to Serve credit also be given for LIHTC equity investments in new construction projects with regulatory agreements that assure long-term rental affordability?

As mentioned above, while current investor demand for Housing Credits is robust, especially in markets with strong demand for CRA-eligible investments, certain segments of the market still suffer from relatively limited liquidity. For example, according to a 2013 study from CohnReznick, per-tax-credit prices on non-CRA projects are between $0.10 and $0.24 lower than prices on CRA projects.7

As a general rule, the GSEs should only receive DTS credit for Housing Credit investments that serve specific underserved segments of the market, including but not limited to:

- Properties receiving long-term Section 8 subsidies from the federal government. Congress and HUD have maintained an excellent track record of funding Section 8 subsidy over many years, and Enterprise believes that—despite budget pressures—Congress will continue to prioritize funding for these programs and will make good on long-term subsidy contracts. Nonetheless, many Housing Credit investors are concerned with so-called “appropriations risk.” As a result, developers and owners of properties with Project-Based Rental Assistance (PBRA) and project-based Housing Choice Voucher (HCV) contracts are required to assume—despite the long-term nature of the contracts—that subsidy is eliminated. Deals

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must be structured with significant transition reserves to protect investors from the operating deficits that would result under such an elimination. These reserves can significantly increase total development costs and the perceived appropriations risk can decrease the value of Housing Credits, particularly in non-CRA markets where demand for credits is less strong. Despite investors’ perception of appropriations risk, in actual practice these properties tend to perform strongly because rents are subsidized by long-term contracts. By focusing Housing Credit investments on projects receiving PBRA and project-based HCV subsidies—and by not requiring extraordinary reserves—the GSEs could invest in solid deals, contribute to efforts to reign in the overall cost of Housing Credit projects and strengthen the Housing Credit market for such properties.

- **Preservation of existing affordable housing.** While demand is very strong for 9-percent Housing Credits used primarily for new construction projects, investor demand is less strong for 4-percent Housing Credits utilized largely for the acquisition and preservation of existing affordable properties. These properties include, among others, HUD Section 8-subsidized stock, HUD 202 elderly properties, USDA Rural Development properties and Housing Credit properties that are past the initial 15-year compliance period (see below). Housing Credit investments in 4-percent deals are also essential to preserving the country’s growing stock of at-risk public housing properties through HUD’s Rental Assistance Demonstration (RAD). By focusing on such deals, the GSEs would be investing in solid, high-impact deals while strengthening the Housing Credit market for such properties.

- **Affordable housing in rural and Native American communities.** Prior to 2008, Fannie Mae was a primary investor in Housing Credit developments in rural and Native American communities. Fannie was one of the only Housing Credit investors working in tribal communities at the time, and Enterprise partnered with Fannie to build or preserve nearly 700 affordable homes on Native Lands before conservatorship began. While some rural and Native American deals have found investors in the years since, we believe the number and range of such deals has significantly diminished. In fact, a prominent member of Congress recently asked the Housing Credit industry for ideas to increase investment in Native American communities. We encourage the GSEs to continue to serve rural and tribal communities if the company re-enters the Housing Credit market. This support should have a programmatic focus and leverage additional subsidies—such as NAHASDA grants or gap financing through the National Housing Trust Fund—to enhance services and management capacity.

- **Assisted living for low-income aging adults.** As the Baby Boomer generation continues to age, we expect a significant increase in demand for assisted living properties for elderly households at all income levels. The Housing Credit can be an effective tool for building or rehabilitating assisted living properties for low-income seniors, but very few are financed through the program today, primarily due to concerns about licensure and Medicaid funding. While Enterprise shares these concerns, we would encourage the GSEs to explore models of investment that would result in more Housing Credit utilization in this segment of the market.
• **Supportive housing with intensive on-site services.** The Housing Credit often pays for most of the development costs on supportive housing properties, which offer both long-term housing and on-site physical and mental health services. For projects that involve intensive services, however—such as those that support disabled adults or chronically homeless people—Housing Credit investors are often concerned about ongoing funding for operating subsidy and supportive services, as these subsidies are typically subject to short-term contracts. Nevertheless, in Enterprise’s experience, such projects tend to perform as well as the Housing Credit portfolio as a whole, and they meet critical community needs. Beginning more than 20 years ago, the GSEs and others invested in a series of very successful Enterprise funds that specialized in supportive housing projects. We would encourage the GSEs to focus on this market segment should they re-enter the market.

In addition to providing DTS credit for investments into the above segments of the Housing Credit market, we urge FHFA to establish rules that encourage the GSEs to preserve the long-term affordability of Housing Credit properties that are currently in their investment portfolios, especially those that are nearing the end of their initial 15-year affordability periods. In the past, the GSEs have argued that, under the terms of conservatorship, they are required to extract the largest possible payment when disposing of Housing Credit assets. This often leaves post-year-15 Housing Credit properties with depleted equity and capital reserves, which can make it difficult to preserve quality and affordability over the long term, especially in high-demand markets where the property has significant market value. FHFA should make clear that preserving the long-term affordability of legacy Housing Credit assets is a strategic goal for the GSEs, then provide appropriate DTS credit whenever a GSE takes concrete steps to accomplish that goal.

**Q44: Should FHFA consider permitting the Enterprises to act as the guarantor of equity investments in projects by third-party investors provided any such guarantee is safe and sound and consistent with the Enterprise’s Charter Act? If so, what types of guarantees should the Enterprises offer?**

The GSEs could further provide liquidity to the market—especially during market downturns—by helping to create a new secondary market for Housing Credits. However, this concept requires more research and testing before it is rolled out at a large scale. FHFA should consider permitting the GSEs to serve as equity guarantors at a limited scale and under certain conditions.

For example, FHFA could permit the GSEs to create a new fund type that would sell short-term “strips” of Housing Credits, thus attracting investors for whom a 10-year credit period and 15-year compliance period are simply too long an investment horizon. In exchange for a fee, Fannie would provide a liquidity guarantee to the fund. An independent asset manager—such as Enterprise—would be responsible for finding a series of shorter-term investors to cover the entire 10-year credit period, likely in strips of between one and three years.
We expect there to be ample demand for these short-term credits, but if subsequent replacement short-term investors cannot be found for whatever reason, the GSEs would be required to step in and take the position, thus providing a liquidity backstop. We expect these terms to be particularly attractive to tax-paying corporations that do not currently participate in the Housing Credit program, as well as banks and other current investors that are leery of long-term Housing Credit investments during market downturns.

Preservation of Affordable Rental Housing Supported through Other Federal, State and Local Programs

28. Should FHFA require that preservation activities extend the property's regulatory agreement that restricts household incomes and rents for some minimum number of years, such as 10 years, beyond the date of the Enterprises' loan purchase? If so, what would be an appropriate minimum period of long-term affordability for the extended use regulatory agreement?

Enterprise supports providing DTS credit if the GSEs extend the mandatory affordability period for a subsidized multifamily property, so long as the period is extended by at least 15 years. Such a benchmark would be consistent with the long-term affordability rules governing the Housing Credit and other federal affordable housing programs.

This will be a particularly important issue in the coming years. According to the Joint Center for Housing Studies, 2.2 million assisted rental units will reach the end of their mandatory affordability period over the next decade, many of which are at risk of being converted to market-rate housing or removed from the housing stock altogether. More than half of those at-risk units are in properties developed using Housing Credits.8

29. Should Enterprise purchases of permanent construction takeout loans on new affordable multifamily rental properties with extended-use regulatory agreements that will keep rents affordable for a specified long-term period, such as 15 years or more, receive credit under the affordable housing preservation market? What would be an appropriate period of long-term affordability for the extended-use regulatory agreements?

The preservation of existing affordable housing properties—particularly buildings subsidized with expiring Housing Credits, Section 8 Project-Based Rental Assistance or USDA Section 515 contracts—must be a priority for the DTS rule. After all, it is significantly cheaper—somewhere between one-half and two-thirds the cost—to preserve an existing affordable property than it is to build a new one.9

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That said, given the scope of America’s rental housing crisis and the vast shortage of affordable housing supply across the country, we do not believe that FHFA should restrict the definition of “preservation” for DTS eligibility to existing buildings. Instead, we urge FHFA to provide DTS credit for activities that preserve the affordable housing stock broadly, regardless of whether it involves recapitalization, light or moderate rehabilitation or new construction. In order to receive DTS credit for a loan, FHFA could require the GSE to show that the new units are in some way replacing at-risk or recently lost affordable units in the same area.

38. Are there other federal affordable housing programs that the Enterprises could support that should receive Duty to Serve credit but that are not enumerated in Sec. 1282.34(c) of the proposed rule?

In addition to the programs listed in the proposed rule, we urge FHFA to make eligible for DTS credit GSE purchases of USDA Section 538 loans, which support the construction or preservation of affordable multifamily properties in rural areas, and HUD Section 184 loans, which finance housing for Native American families living on and off tribal lands.

The proposed rule also states that loans financed through the National Housing Trust Fund and Capital Magnet Fund are not eligible for DTS credit. We urge FHFA to clarify that otherwise eligible multifamily loan purchases made in conjunction with funding from either program—such as gap financing through the Housing Trust Fund—would be able to receive DTS credit, so long as the loan itself is not directly funded by either program. This is particularly important for the Housing Trust Fund, since most properties supported by the program will likely require some sort of debt financing to cover construction, acquisition or rehabilitation costs.

40. Are there other state or local affordable housing programs for multifamily or single-family housing that the Enterprises could support that should be eligible to receive Duty to Serve credit in addition to those discussed above?

The Housing and Economic Recovery Act states that, in addition to certain federal affordable housing programs, the DTS rule shall facilitate a secondary market for “comparable state and local affordable housing programs.” Under the proposed rule, the GSEs would be eligible to receive DTS credit for properties supported by any state and local programs that “restrict all or a portion of their units for very low-, low-, or moderate-income families due to participation in density bonuses or property tax abatements, state or local affordable housing programs, state LIHTC programs, programs for redevelopment of government-owned land or buildings as affordable housing, and inclusionary zoning.”

We are concerned that this criteria is overly broad, which could dilute the DTS obligation and open the door for “gaming” by the GSEs. For example, under the proposed criteria, a loan made to a market-rate apartment affordable to a renter making the area median income could be eligible for DTS credit so long as the property received any form of density bonus or property tax abatement, even if it resulted in a modest rent restriction on just a small portion of the
units in the property. Such a scenario does not seem to be consistent with the legislative intent behind the Housing and Economic Recovery Act.

Since state and local housing policies vary dramatically from community to community, FHFA should resist a one-size-fits-all approach to this portion of the DTS rule. Instead, FHFA can establish a process through which the GSEs can apply for DTS credit for specific projects supported through state and local programs. For example, FHFA could determine that properties with relatively deep rent subsidies through a state tax credit program are eligible for DTS credit, while properties with relatively modest rent subsidies through a density bonus program are not eligible. FHFA could then publish a public list of eligible state and local affordable housing programs, which would be updated as necessary and subject to public comment as appropriate.

In addition, we urge FHFA to clarify that the GSEs will only receive DTS for the eligible portion of the property that is deemed affordable, not the entire property. As currently drafted, even if a relatively small portion of the units in a property have restricted rents—such as an “80-20” development where the vast majority of units are market-rate—the GSE could theoretically receive DTS credit for the entire property. Of course, the same rule should apply to mixed-income properties developed with support from federal affordable housing programs.

**Support to CDFIs and other Small and Community Lenders**

47. Should an Enterprise’s purchase and securitization of loan pools from non-depository community development financial institutions, community financial institutions, and federally insured credit unions subject to the asset cap, where the loan pools are backed by existing small multifamily properties, be a Regulatory Activity?

We support FHFA’s decision to include certain GSE loan pool purchases from Community Development Financial Institutions (CDFIs) and other small and community lenders as eligible for DTS credit. However, we urge FHFA to provide more flexibility on the eligibility requirements for small multifamily loans.

Instead of limiting eligibility to loans financing properties with 5-50 rental units, FHFA should consider capping the size of each loan in the pool, consistent with the GSEs’ existing small multifamily loan products. For example, Fannie Mae’s Small Loan Lenders program sets the loan limit at $3 million for most housing markets and $5 million in certain high-cost markets.

49. How could the Enterprises provide support for the liquidity needs of smaller banks and community-based lenders that finance small multifamily properties, for example by buying and

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10 As a real-world example, a recent report from the Greenwich Village Society for Historic Preservation found that several developments in New York City received density bonuses from the city "without requiring any affordable housing either on-site or off, as mandated by law." For more information, see: https://www.dnainfo.com/new-york/20160208/east-village/city-approved-oversized-developments-affordable-housing-zones-report.
securing loan pools these lenders have originated? What kind of Enterprise support would encourage these types of lenders to increase their financing of these properties?

We urge FHFA to expand the DTS eligibility rules to include other types of GSE support to community lenders, such as patient capital and other direct investments into eligible CDFIs. According to analysis from ImpactUs, a soon-to-be-launched, Enterprise-supported web platform for community investment products, at least 28 large CDFIs are currently raising investment capital through securities.11 One of those securities is the Enterprise Community Impact Note, a fixed-income investment product that delivers a competitive rate of return to investors while primarily financing housing and community development projects in lower-income neighborhoods.12 If Fannie or Freddie were to invest in a product like the Impact Note offered by an eligible CDFI or community bank, FHFA should allow that investment to be eligible for DTS credit.

Alternatively, the GSEs could receive DTS credit for providing Equity Equivalent (EQ2) capital to an eligible CDFI. EQ2 is a financial product that: (1) is carried as an investment on the investor’s balance sheet; (2) is a general obligation of the CDFI that is not secured by any of the CDFI’s assets; (3) is fully subordinated to the right of repayment of all of the CDFI’s other creditors; (4) does not give the investor the right to accelerate payment unless the CDFI ceases its normal operations; (5) carries an interest rate that is not tied to any income received by the CDFI; and (6) often has a rolling term or indeterminate maturity.13

In addition to its flexible terms and often below-market interest rates, EQ2 capital increases the CDFI’s debt capacity by protecting senior lenders from losses. Depository banks are significant providers of EQ2 capital today, due in part to their favorable treatment in CRA assessments. Additional EQ2 investments by the GSEs could meaningfully increase demand for these products and help to bolster the lending businesses of many CDFIs.

**Financing for the Energy-Efficient Rehabilitation of Multifamily Housing**

51. Should Enterprise support for multifamily properties that include energy improvements resulting in a reduction in the tenant’s energy and water consumption and utility costs be a Regulatory Activity?

We commend FHFA for including loans for energy efficiency upgrades on multifamily properties in the DTS rule. Enterprise has long known that there are tremendous economic benefits to investments in energy-efficient systems for multifamily buildings, especially for the existing

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affordable housing stock. In addition, green homes have proven to improve a resident’s asthma, cardiovascular health, mental health and other major health issues.\(^{14}\)

In 2004, Enterprise launched the Green Communities Criteria, a first-of-its-kind framework for sustainable building practices for the construction and rehabilitation of affordable rental housing. For the latest update released in 2015, Enterprise worked with the American Heart Association and other partners to incorporate building practices that promote long-term health for residents, resilient design features to maintain livable conditions during natural disasters and crucial connections to transit and other opportunities.\(^{15}\) Today the criteria have been incorporated into the rules for allocating Housing Credits in 22 states, and several cities, such as New York, Cleveland and Washington, D.C., have integrated the criteria into local incentives or requirements for green building and retrofits.

The GSEs, and Fannie Mae in particular, have been important partners in our effort to make green building the norm for our industry. Through its Green Preservation Plus program, Fannie helps owners of affordable multifamily housing access the capital they need to make economically justifiable energy and water retrofits. Freddie Mac recently unveiled a similar retrofit loan product through its Green Rebate Offering. These programs have helped several developers complete retrofits that otherwise would not be possible, but both GSEs could be doing a lot more to support energy-efficiency whenever economically feasible.

In addition to the purchase of eligible loans, we recommend that the GSEs receive DTS credit if they choose to invest in the Department of Housing and Urban Development’s forthcoming “Pay for Success” demonstration to improve the energy and water efficiency of HUD-assisted multifamily properties, or to fund investments in renewable energy systems for those properties. The demonstration, which was authorized by Congress in December 2015, allows HUD to enter into contracts with outside entities to raise private capital from investors to fund system upgrades in eligible properties. Investors are paid back—plus a financial return—only when certain cost savings are realized, as verified by a third party.\(^{16}\) We also urge FHFA to provide DTS credit for GSE investments in other Pay for Success initiatives, so long as they serve one of the underserved markets identified in the DTS rule.

52. How can the Enterprises provide more outreach to lenders regarding the Enterprises’ energy improvement products?

In addition to the actual loans, the GSEs should receive DTS credit for certain activities to educate stakeholders on their existing green products, including training and technical

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\(^{16}\) For more on the HUD Pay for Success demonstration, see: http://blog.enterprisecommunity.com/2015/12/pfs-program-passed.
assistance to multifamily lenders and underwriters who do not currently participate in the programs.

53. Should the Enterprises require the lender to verify before the closing of an energy improvement loan that there are reliable and verifiable projections or expectations that the proposed energy improvements will likely reduce the tenant’s energy and water consumption and utility costs and, if so, what standards of reliability, verifiability and likelihood of reduced consumption and costs should be required?

Enterprise supports certain benchmarks to ensure that DTS credit is only awarded for loans that are expected to yield meaningful reductions in energy and water consumption. The proposed 15-percent benchmark is reasonable, since a similar standard is currently used in Fannie’s Green Preservation Plus program.

In addition to the minimum consumption benchmark, it is important to establish some minimum certification requirement to verify that there are reliable expectations of cost savings before closing the loan. FHFA should limit DTS credit to loans that finance retrofits that are certified by an approved standard for green building, such as the Enterprise Green Communities Criteria. In establishing this certification standard, FHFA should consider the cost to developers to ensure that the rules are not overly burdensome. For example, as part of its Green Preservation Plus product, Fannie allows for eight different forms of certification, including the Enterprise Green Communities Criteria. FHFA might also consider allowing a “lighter-touch” certification option for small multifamily loans and loans by smaller community lenders, including CDFIs.

55. What if any ongoing monitoring should be required to measure the effectiveness of financed energy improvements in reducing tenants’ energy and water consumption and utility costs?

After a retrofit loan is deemed eligible for DTS credit, FHFA could require regular reporting on the actual reductions in energy and water consumption over the life of the loan. However, the actual consumption numbers should not influence the loan’s DTS eligibility. In other words, as long as the minimum benchmark and certification requirements are met prior to closing the loan, the GSE should receive DTS credit for the loan, even if the projected reductions are not realized.

56. For the proposed requirement that the reduced utility costs will offset the upfront costs of the improvements within a reasonable time period, should a reasonable time period be defined and, if so, how?

We do not think it is necessary to enumerate a maximum or minimum “reasonable time period” in which any upfront costs must be recouped through reduced utility costs. This time period should be determined on a loan-by-loan basis, depending on the capital needs of the property and the nature of the retrofit.
Support for Rental Housing in Rural Areas

70. Would one of the four definitions discussed above better serve Duty to Serve objectives, and if so, why?

We acknowledge that there is no perfect definition of “rural area,” and that FHFA’s definition must work seamlessly with the GSE’s current systems and loan products. That said, we are concerned that certain rural communities, namely many small and mid-sized towns, would be left out of the proposed definition.

With that in mind, we recommend that FHFA define a rural area as “any area other than a city or town with a population of greater than 50,000 inhabitants and the urbanized area of that city or town.” This definition has been approved by HUD for use in allocating funds through the Section 4 Capacity Building for Community Development program. We believe that it provides adequate flexibility to lenders and avoids the often arbitrary distinctions of narrower definitions.

77. Are there high-needs rural regions and/or high needs rural populations in addition to those identified above that should be included in this section, and, if so, how should they be defined to receive Duty to Serve credit?

Enterprise supports each of the rural regions and populations identified as “high-needs” in the proposed rule. In addition, we recommend that FHFA include rural areas of Puerto Rico as a “high-need rural area” when determining DTS eligibility.

Loans for Manufactured Housing

10. What existing Enterprise criteria for support of manufactured home loans titled as real property could be modified to expand support for very low-, low-, and moderate-income families, consistent with Enterprise safety and soundness?

Manufactured housing is a crucial source of affordable housing for low-income renters and homeowners, especially in many rural and suburban communities. To the extent possible, we urge FHFA to focus DTS credit to segments of the manufactured housing market that are not well served by private sources of capital, so long as the parks and units meet minimum standards for quality and tenant protections. For example, today the GSEs are generally limited to purchasing loans on four- or five-star parks, which tend to be targeted to more moderate-income renters, including retirement communities. As a result, parks with fewer than four stars often have trouble accessing long-term, fixed-rate loans, which often translates into higher-than-necessary rents for residents—many of whom earn very low- and extremely low-incomes.

We encourage FHFA to weigh DTS credit on manufactured housing loans to adequately reflect the level of affordability to the tenant. For example, for loans on manufactured housing parks, the GSEs should receive additional DTS credit for loans that result in deeply affordable pad
rents and receive less DTS credit for loans to “luxury” parks with pad rents that are less affordable. In addition, FHFA could provide additional DTS credit for loans to owners who provide certain assurances to tenants and other consumer protections, such as a lease term of at least one year and requirement of good cause for eviction.

For responses to the specific questions related to manufactured housing in the proposed rule, we refer FHFA to the comment letter submitted by the Center for American Progress and Consumer Federation of America.

**Other Answers to Specific Questions in the Proposed Rule**

5. *Should Duty to Serve credit be given under the loan products assessment factor for an Enterprise's research and development activities that may not show results in their initial phase, but which may be necessary for long-term product planning and development for underserved markets?*

We strongly support allowing certain research and development activities by the GSEs to be eligible for DTS credit, so long as they serve one of the underserved markets identified in the DTS rule. For example, if a GSE were to pilot a new financing tool aimed at preserving the long-term affordability of Housing Credit properties after their initial 15-year affordability period without requiring additional tax credits, the company should receive some DTS credit for this activity, even if it results in very few actual deals or proves financially unviable.

9. *Should public input be sought on the Enterprises’ proposed Underserved Markets Plans and, if so, is there a more effective approach than the proposed approach?*

We strongly support requiring a brief public comment period before FHFA considers each GSE’s Underserved Markets Plan. In addition, the proposed rule is unclear as to whether the many documents and datasets involved of the DTS process—including the final Underserved Market Plan, evaluation guides, quarterly reports and annual evaluations—will be available to the public. We urge FHFA to make all relevant reports and datasets public within a reasonable timeframe, while providing necessary protections for proprietary information and other sensitive content.

80. *Is there an alternative approach to evaluation of Enterprise Duty to Serve compliance that would enable FHFA to better measure the Enterprises' Duty to Serve compliance?*

Enterprise supports the general process laid out in the proposed rule, including: (1) the development of Underserved Market Plans by the GSEs; (2) the release of evaluation guides by FHFA; (3) quarterly reporting by the GSEs; and (4) an annual evaluation by FHFA. That said, we are concerned that the specific scoring methods laid out in the proposed rule might be overly prescriptive and could limit FHFA’s ability to accurately gauge GSE compliance throughout the year.
In completing the final rule, we urge FHFA to provide flexibility on how it prioritizes—and ultimately weighs—assessment factors and activities in each GSE’s evaluation guide. Specifically, FHFA should be permitted to assign more or less DTS credit for a particular assessment factor or activity in a GSE’s Underserved Market Plan, based on a reasonable expectation of its impact on the underserved market or target population. FHFA should also be allowed to adjust those weights on a quarterly basis, based on data reported by the GSEs and relevant changes in the market. For one example of how this could work, we refer FHFA to the comment letter submitted by the Center for American Progress and the Consumer Federation of America.

In addition to the annual evaluation process, we urge FHFA to incorporate aspects of the DTS evaluation into each GSE’s annual Conservatorship Scorecard.

82. Is FHFA’s proposed definition of “high opportunity area” the most appropriate? Should the rule use DDAs to define high opportunity areas outside of metropolitan areas, or is there a better definition, such as a factor-based definition, that would be preferable for these areas?

Enterprise supports FHFA’s decision to provide extra DTS credit for GSE investments in high-opportunity neighborhoods and mixed-income developments in areas of concentrated poverty. That said, we urge FHFA to establish a more precise definition of “high-opportunity” instead of relying on HUD’s Difficult to Develop Area (DDA) designation. The DDA designation is a relatively blunt tool that reflects a neighborhood’s overall cost of development, not access to essential resources for residents.

FHFA should consider adopting similar standards to those used by certain states for the allocation of Housing Credits. For example, Massachusetts and Texas each provide extra credit to developments in areas identified as opportunity neighborhoods, while Pennsylvania and Connecticut prioritize developments that are located near certain amenities, such as employment centers and transit.17

Enterprise is currently developing a “Communities of Opportunity Index” that measures the basic indicators of well-being for families in a particular neighborhood, including healthy, affordable and appropriate housing, ample transportation options and supportive community resources for all residents. When the index is released publicly—likely sometime in 2016—we look forward to working with FHFA to incorporate key metrics into their definition of “high-opportunity” for future DTS evaluations.

Next Steps

Again, thank you for the opportunity to comment on this important issue. Through the above improvements to the proposed rule, FHFA has the opportunity to meaningfully expand GSE

support to underserved segments of the multifamily market and help to make a dent in the rental housing crisis facing millions of families across the country.

Of course, since the GSEs do not originate loans, it is important to keep in mind that the DTS rule can only be successful if primary market participants have a financial incentive to offer the loans and other products that would be eligible for DTS credit. In the coming months and years, we look forward to working with FHFA, the GSEs and our partners across the country to develop the products and standards necessary to implement the rule effectively.

If you have any questions about the above comments, please contact me at lblatchford@enterprisecommunity.org or John Griffith, a Senior Analyst & Project Director with Enterprise’s Public Policy team, at jgriffith@enterprisecommunity.org.

Sincerely,

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