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Final Rule: Enterprise Duty to Serve Underserved Markets

Background

In 2008, the enactment of the Housing and Economic Recovery Act (HERA) provided a mandate for both Government Sponsored Enterprises (GSEs), the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), to serve housing needs of low to moderate income families in underserved markets. Over the past few years, the Federal Housing Finance Agency (FHFA) proposed regulatory action to implement the Duty To Serve (DTS) statutory requirements and received over 1,500 comments on its 2015 proposed rule. On December 13, 2016, FHFA finally issued a final regulation to implement the DTS requirements for Fannie Mae and Freddie Mac. As provided in the final rule, "the GSEs must facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in three underserved markets specified in the statute: Manufactured housing, Affordable housing preservation and Rural housing."

This NAHMA Analysis will examine the key parts of the DTS regulation, including how the GSEs will develop underserved marketing plans for housing preservation and rural housing.

Underserved Marketing Plans

Under the DTS requirement, the GSEs will submit to FHFA a proposed Underserved Markets Plan every three years, and include public participation in the plan development. In each plan, the GSEs must assist each of the three underserved markets through statutory and regulatory activities. The GSEs can propose additional activities and no particular activity is mandated. For each activity, measurable objectives must be established on how the GSEs will accomplish the activity. Extra credit could be given when the GSEs promote residential economic diversity in an underserved market. Annually, FHFA will evaluate each GSE's compliance with their DTS obligations and report back to Congress on their evaluations. The plans will become effective January 2018.

Affordable Rental Housing Preservation

NAHMA supported the proposed DTS rule, specifically the interpretation of "preservation" to allow GSE support for both "the purchase of permanent construction loans on rental properties with long-term affordability regulatory agreements and the purchase of refinanced mortgages on existing rental properties with long-term affordability regulatory agreements." NAHMA also strongly supported FHFA's decision to include GSE support for LIHTC, HUD and USDA

affordable rental housing programs, as well as the goal of increasing residential economic diversity.
In their Underserved Market Plan, the GSEs can increase their support of the secondary market for loans that finance the preservation of multifamily (and single-family) affordable homes. This includes loans that finance the preservation of affordable housing that was developed through the following federal housing programs: HUD's Section 8 Rental Assistance Programs; Section 236 Rental and Cooperative Housing Program; Section 221(d)(4); Section 202 Housing Program for Elderly Households; Section 811 Housing Program for Disabled Households; McKinney-Vento Homeless Assistance Programs; USDA Section 515 Rural Housing Programs; the Low-Income Housing Tax Credits(LITHC); and other comparable state and local affordable housing programs.

The final rule does set parameters for loans for affordable housing preservation. The final rule states, "only certain permanent construction take-out loans are eligible for DTS credit under the affordable housing preservation market….GSE activities related to permanent construction take-out loans for replacement properties that preserve existing subsidies on affordable housing for a regulatory period of required affordability. This period must be at least as restrictive as the longest affordability restriction applicable to the subsidy or subsidies being preserved….Additionally, GSE activities related to permanent construction take-out loans for housing that was developed under state or local inclusionary zoning, real estate tax abatement, or loan programs, where the property owner has agreed to restrict a portion of the units for occupancy by very low-, low-, or moderate-income families, and to restrict the rents that can be charged for those units at affordable rents to those populations, or where the property is developed for a shared equity program that meets the requirements to be eligible for DTS credit….For these loans to be eligible for Duty to Serve credit, there must be a regulatory agreement, recorded use restriction, or deed restriction in place that maintains affordability for the term defined by the state or local program. These limitations on eligible activities related to permanent construction take-out loans apply to Statutory, Regulatory, and Additional Activities in this market."

The final rule also lists the regulatory activities the GSEs may undertake, including: "purchasing loans on small multifamily rental properties of 5 to 50 units; purchasing energy efficiency improvement loans on multifamily rental properties; activities that support financing of purchase or rehabilitation of certain distressed properties; activities related to public housing properties that use HUD's Rental Assistance Demonstration Program; and activities related to properties in designated areas under HUD's Choice Neighborhoods Initiatives Program are eligible for Duty to Serve credit." Supplementary guidance on preservation activities and affordability periods may be provided in FHFA's Evaluation Guidance. FHFA plans to post proposed Evaluation Guidance for public input within 30 days of publication of the final rule, which is January 13, 2017.

Rural Housing

Under the proposed rule, NAHMA supported FHFA's broad definition of "rural areas" and stated that "regardless of the definition, the end goal of extending GSE support for affordable housing in rural markets should be the absolute priority." NAHMA is encouraged by the final rule requirements to serve rural housing needs. Under the final DTS rule, FHFA provided regulatory activities for GSEs to serve rural markets. In their Underserved Market Plan, the GSEs activities include: supporting high-needs rural regions; supporting high-needs rural populations; financing by small financial institutions of rural housing; and financing of small multifamily rental properties in rural areas. The high-needs rural regions include "Middle Appalachia, the Lower Mississippi

Delta, colonias, and rural tracts in certain persistent poverty counties are eligible for Duty to Serve credit….High needs rural populations includes Federally recognized Native American tribe located in a Native American area, and agricultural workers.” NAHMA will continue to advocate that GSEs support the maturing mortgage crisis in the USDA multifamily portfolio.

Conclusion

In conclusion, NAHMA is encouraged by the FHFA final DTS rule and the focus of providing and preserving affordable housing in underserved markets. In the coming weeks, NAHMA will participate in public listening sessions with FHFA, Fannie Mae and Freddie Mac. Our goal is to provide input on development of proposed Underserved Markets Plans for both GSEs, specifically advocating for increased investments for rental housing to meet the ever growing affordable housing demand around the nation.