

Multifamily Seller/Service Guide

Chapter 25

Originating a Targeted Affordable Housing Tax-Exempt Loan



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25.1 Overview (08/17/23)

a. Description of chapter (08/17/23)

This chapter provides the requirements for Targeted Affordable Housing (TAH) Seller/Service providers who are originating a Mortgage under the TAH Tax-Exempt Loan (TEL) Purchase Program utilizing the prior approval model.

This chapter describes:

- The requirements and procedures that the Seller must follow to originate, deliver, and service a TEL
- The characteristics that the loan structure must have in order for Freddie Mac to purchase the TEL

The Seller and Freddie Mac will both rely on Single Counsel for TELs. See Section 25.2 for a description of services Single Counsel may provide for a TEL transaction and the fees associated with such services.

With respect to TELs:

- All references to Seller's counsel in this chapter should be deemed to refer to Single Counsel.
- All references to "Loan Agreement" in this chapter should be deemed to refer to the Continuing Covenant Agreement published under "TEL" at mf.freddie.com/lenders/legal/tah-documents.html.
- All references to other Loan Documents in this chapter will be deemed to refer to the documents published under "TEL" at mf.freddie.com/lenders/legal/tah-documents.html.
- Seller will be deemed to have made to Freddie Mac all of the Seller/Service provider Representations and Warranties set forth in this Guide, as well as those found on mf.freddie.com, which are incorporated by reference pursuant to Chapter 5, except that the Seller/Service provider Representations and Warranties regarding (a) authorization and execution of documents and (b) enforceability of documents will apply with respect to each of the Loan Documents.

See [Exhibit 2](#), Origination Guidelines for Targeted Affordable Housing Mortgages for additional information about the types of affordability components that are available to TAH Seller/Service providers.

b. Loan structure (08/17/23)

The TAH TEL Purchase Program requires a back-to-back loan structure. First, the Seller originates and funds the TEL to a governmental lender. The TEL is evidenced by a tax-exempt governmental note delivered by the governmental lender to Seller, which must bear interest at a fixed rate. The governmental lender will use the proceeds of the TEL to fund a separate mortgage loan to the Borrower with matching economic terms. The TEL will be a nonrecourse obligation of the governmental lender secured solely by receipts and revenues from the mortgage loan to the Borrower and the collateral pledged therefor. The Borrower's payment

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obligations in respect of the mortgage loan will be evidenced by a Note delivered to the governmental lender and are secured by a Security Instrument encumbering the Property in favor of the governmental lender. The governmental lender will endorse the Note and assign the Security Instrument to a fiscal agent as security for the TEL. If Freddie Mac purchases the TEL as evidenced by the tax-exempt governmental note, then payments made by the Borrower under its mortgage loan documents will be collected by the Servicer and paid to Freddie Mac, as owner of the TEL, unless the governmental lender requires the fiscal agent to be the paying agent in the transaction, in which case the Servicer will deliver the Borrower's loan payments to the fiscal agent, and the fiscal agent will pay Freddie Mac according to its instructions. The Servicer will retain the Servicing Spread and any recurring fees of other parties to the transaction that are payable from monthly collections under the transaction documents, unless the governmental lender requires the fiscal agent to be the paying agent in the transaction, in which case the Servicer will deliver any recurring fees of other parties to the transaction to the fiscal agent, and the fiscal agent will pay such other parties according to the transaction documents.

c. Loan purpose (08/17/23)

A Mortgage is eligible for purchase by Freddie Mac under the TAH TEL Purchase Program if it is originated for the purpose of:

- New construction (but only pursuant to a Forward Commitment under Chapter 25A)
- Acquisition and rehabilitation
- Refinancing through a refunding of existing tax-exempt bonds or an existing TEL

d. Investment quality (08/17/23)

Each Mortgage to be delivered to Freddie Mac under the TAH TEL Purchase Program must have characteristics that demonstrate investment quality as described in Section 10.7.

e. Preservation Rehabilitation for TEL Mortgages (08/17/23)

A TEL with newly issued 4% LIHTC is eligible for the Preservation Rehabilitation product as described in Section 19.2(e). All Preservation Rehabilitation Mortgages submitted for purchase under the TAH TEL Purchase Program must comply with the requirements of Section 19.2(e) as well as with the requirements of this chapter. The following clarifications to the requirements of Section 19.2(e) apply to TELs:

- All work must be completed and the Property must reach stabilization within 24 months of the Origination Date or, if earlier, within the term of the TEL.
- Freddie Mac purchases TELs that finance the entire cost of the anticipated rehabilitation prior to the commencement of rehabilitation.

f. Combination financing (08/17/23)

Combination financing is the use, for one Property, of a tax-exempt loan and either a cash Mortgage or a taxable governmental loan. It may be utilized for new tax-exempt debt allocations or for refundings. In a new TEL transaction or a refunding, combination financing may allow placement of total debt that exceeds the available tax-exempt debt allocation.



The Seller must underwrite the TEL and the cash Mortgage or taxable governmental loan as a single financing, secured (in the case of a taxable governmental loan) by a single security instrument or (in the case of a cash Mortgage) by separate security instruments that are cross-defaulted. The Seller must neither consider nor underwrite the cash Mortgage or taxable governmental loan as secondary debt.

The following conditions also apply:

- The taxable portion must have a term no longer than the TEL.
- The combination of both the tax-exempt and taxable portions of the financing will be treated as a single exposure in applying LTV, DCR and the other credit parameters of the TEL product.
- Freddie Mac takes into account the value of the tax-exempt financing in its calculation of the LTV; however, it will not make any adjustment for the taxable portion of the financing.

g. TEL Loan Document forms (08/17/23)

The required forms of all published documents and riders applicable to the TAH TEL Purchase Program are shown on the Currently Acceptable Multifamily Loan Documents – TEL Execution list at mf.freddiemac.com. The Loan Documents published under “TEL” at mf.freddiemac.com/lenders/legal/tah-documents.html will be used for TEL transactions. Any modifications to, or deviations from, the published TEL documents are subject to Freddie Mac’s prior approval. Any modifications to, or deviations from, the standard TEL structure are also subject to Freddie Mac’s prior approval. Freddie Mac reserves the right to require that additional provisions be included in the Loan Documents for a specific transaction or to decline to approve individual provisions of the Loan Documents.

h. Bond counsel opinion (08/17/23)

Prior to its purchase of the TEL, Freddie Mac must receive an unqualified opinion, satisfactory to Freddie Mac, from a nationally recognized bond counsel as to:

- The authorization and valid issuance of the tax-exempt governmental note
- The validity of the lien on the pledged security for the repayment of the governmental note under the funding loan agreement
- The excludability from gross income, for federal income tax purposes (and, where applicable, for State income tax purposes), of the interest payable on the tax-exempt governmental note
- Freddie Mac’s right to rely upon the opinion, or alternatively, a reliance letter addressed to Freddie Mac giving Freddie Mac the right to rely upon the opinion of the bond counsel

i. Subordinate Debt (08/17/23)

With respect to subordinate debt, the requirements of Section 19.2(f) apply.



j. Securitization of Mortgages (08/17/23)

The provisions of Section 17.1(d) apply.

k. Delivery options (08/17/23)

See Section 25.3.

l. Minimum Origination Fee (08/17/23)

The provisions of Section 17.1(f) apply.

m. Other requirements (08/17/23)

All Mortgages submitted for purchase under the TAH TEL Purchase Program must comply with the requirements of Chapters 8, 9 and 10 as well as with the requirements of this chapter.

25.2 Single Counsel for TEL transactions (08/17/23)

a. Engagement of Single Counsel (08/17/23)

Freddie Mac engages Single Counsel to jointly represent Freddie Mac and the Seller in connection with the TEL transaction. Such representation may include the following services:

- Review of and advice regarding any existing loan/bond documents
- Advice concerning structure of the proposed transaction
- Assistance in negotiations with the other parties to the proposed transaction
- Participation in telephone calls related to the proposed transaction
- Preparation of (i) the Legal Issues Analysis, together with any other required legal analyses and (ii) the analysis of exceptions to title insurance coverage, all in accordance with the requirements of this Guide
- Preparation of documents related to the proposed transaction
- Review of documents prepared by other parties, including the funding loan agreement, tax-exempt governmental note, project loan agreement, tax regulatory agreement and any other documents pertaining to the governmental lender, each of which will be prepared by bond counsel
- If required by Freddie Mac, attendance at the closing of the proposed transaction as Freddie Mac's and Seller's representative

b. Amount of fees and Expenses (08/17/23)

The fee of Single Counsel is a negotiated fee determined by Freddie Mac. The fee includes all reasonable out-of-pocket expenses (including photocopying, messenger and overnight



deliveries) incurred by such legal counsel in connection with such representation. The fee does not include any travel expenses incurred by counsel in connection with its participation in the proposed transaction. In the event the proposed transaction does not close, the fixed fee will be reduced to the actual time value of Freddie Mac's counsel, if such time value is less than the fixed fee. If significant unanticipated complications occur in the proposed transaction, Freddie Mac may adjust the fee upward to reflect the additional services required. Such additional complications include:

- More than limited negotiation of loan or mortgage documentation
- More than limited negotiation with the governmental lender regarding regulatory requirements or intercreditor arrangements
- Unexpected or unforeseen changes in facts or structure that materially increase the legal work required
- Existence of a ground lease, subordinate debt, a housing assistance payment contract, existing regulatory agreements or a tax abatement
- Involvement of parties inexperienced in tax-exempt financing transactions
- Failure of the Seller to perform its functions in a timely manner
- More than one Property being financed
- Closing occurring more than six months after the date of the Seller's Mortgage application with the Borrower

c. Payment of fees and expenses (08/17/23)

The Seller is obligated to pay the fees and expenses of Single Counsel without regard to either the final structure or consummation of the proposed transaction. In addition, the Seller is obligated to reimburse Freddie Mac for such fees upon written notification from Freddie Mac that such sums are due. The Seller may, at its option, obtain from the Borrower the funds with which to pay or reimburse the fees and expenses of Single Counsel. Nevertheless, Seller is responsible for the payment of Single Counsel's fees and expenses regardless of whether the Seller obtains a deposit for such funds from the Borrower or is successful in obtaining such funds at a later date.

The fees and expenses of Single Counsel are payable, in full, upon the earlier of:

- The closing of the proposed transaction, or
- Any decision by the Seller or by Freddie Mac, in its sole discretion, not to proceed further with the proposed transaction, or
- The Seller's determination, made at the Seller's sole discretion, that the proposed transaction has been abandoned or that the completion of the proposed transaction is not feasible.



25.3 Loan Submission Template (LST), Quote, Underwriting Package, Commitment, Locking the Rate, Delivery; Approval by TAH Underwriting Supervisor (08/17/23)

Freddie Mac offers a standard delivery option for TEL Mortgages under Chapter 27. Except as stated below, the provisions of Chapter 27 apply to TEL Mortgages.

a. Debt service ratio (08/17/23)

The calculation of the underwritten interest rate is outlined below:

Characteristics	Underwritten Interest Rate
Fixed-rate TEL	Fixed rate necessary to repay loan + Servicing Spread
Taxable governmental loan (if combination financing)	Fixed rate necessary to repay loan + Servicing Spread

b. Vacancy and collection loss rate (09/28/18)

With respect to vacancy and collection loss rates, the requirements of Section 19.2(a)(2) apply.

c. Maximum term and amortization period (09/28/18)

For LIHTC Properties, the maximum term and amortization period is 35 years. For non-LIHTC Properties, the maximum term and amortization period is 30 years.

d. Adjustments to the capitalization rate for a Property with TEL financing (09/28/18)

Freddie Mac may adjust the capitalization rate recommended by the appraiser to take into account the value attributable to the below-market interest rate on the proposed Mortgage. The adjusted capitalization rate will not be more than 100 basis points below the market capitalization rate for a conventional property. If there is a taxable component to the financing, this adjustment will be done proportionately. Freddie Mac does not permit any other adjustments to value based on the Property's entitlement to LIHTC.

e. Additional requirements for refundings or refinancings of tax-exempt debt (08/17/23)

If the proposed transaction is a refunding or refinancing of a prior tax-exempt bond or TEL transaction and requires review and analysis of the existing bond documents by Freddie Mac's outside legal counsel, the Seller will be obligated to pay the fees and expenses of Freddie Mac's outside legal counsel associated with such review, pursuant to Section 25.2. To the extent applicable, all of the conditions precedent with respect to the refunding of any prior indebtedness of the governmental lender used to finance the project must have been satisfied prior to final delivery.

f. Approval by TAH Underwriting Supervisor (08/17/23)

The LST, preliminary underwriting package, and full underwriting package, as applicable, must each be approved and signed by the Seller's TAH Underwriting Supervisor, as described in Section 3.13.



g. Conditions Precedent to Rate Lock (08/17/23)

Prior to locking the rate, Seller must deliver each of the following items in form acceptable to Freddie Mac:

- Final payment and performance bonds meeting the requirements of Section 19.2(e)(14)
- A proforma rehabilitation escrow fund draw schedule
- A rent schedule meeting the requirements of this Guide dated no more than 30 days prior to the date of Rate Lock
- [Form 1133, Certification of Borrower Insurance Compliance](#) and evidence of property insurance for the Property meeting the requirements of this Guide
- Drafts of the Loan Documents required by the Letter of Commitment in substantially final form
- Drafts of the required opinions of bond counsel, counsel to the fiscal agent, and counsel to the Borrower, SPE Equity Owner (if applicable) and Guarantor in substantially final form
- A pro forma title insurance policy which takes no exceptions for materialmen's or mechanics' liens by any party and otherwise meets the requirements of this Guide
- A survey of the Property, if one is required by the Letter of Commitment, meeting the requirements of this Guide
- Drafts of the organizational documents of the Borrower, including Borrower's amended and restated operating or partnership agreement (as applicable), in substantially final form
- Final drafts (or copies of executed versions, as applicable) of all documentation concerning approved Subordinate Financing (if any) and laundry and commercial leases, including such subordination agreements as are required by the Letter of Commitment
- Final drafts of the land use restriction agreements or similar instruments to be executed by the Borrower in connection with the TEL
- Evidence of final approval from the governmental lender
- For LIHTC properties, a copy of the 42(m) letter for the Property
- For LIHTC properties, evidence of final approval from the LIHTC equity investor
- Confirmation from the Borrower that, after appropriate due diligence and inquiry, the Borrower is not aware of any matter that would prevent the closing of the transaction, the delivery of the Loan Documents (including the delivery of the tax-exempt governmental note by the governmental lender), or the funding of any equity or Subordinate Financing (as applicable) required for closing, in each case in accordance with the requirements of the



Letter of Commitment and the Loan Documents, along with an acknowledgment from the Borrower that Rate Lock is occurring in material reliance upon the foregoing confirmation

h. Yield maintenance period (08/17/23)

The provisions of Section 27.30(c) are inapplicable to TEL Mortgages.

25.4 Final delivery; Funding (08/17/23)

The provisions of Chapter 32 apply, with the exception that the Final Delivery Table of Contents refers to the Final Delivery Package Table of Contents –Immediate Funding Tax-Exempt Loan.

25.5 UCC continuation and termination statements (08/17/23)

The Seller's responsibility for filing UCC (Uniform Commercial Code) continuation and termination statements applies only to financing statements under which Freddie Mac is the secured party and does not apply to financing statements under which the governmental lender or the fiscal agent is the only secured party. With respect to any financing statement under which Freddie Mac is the secured party, the Seller must not file a termination statement until the obligations of the governmental lender under the tax-exempt governmental note have terminated and all obligations of the Borrower under the Note and the project loan agreement have been satisfied. See Section 29.4 and the Final Delivery Instructions found at mf.freddiemac.com/lenders/purchase for further information about UCC financing statements.

25.6 General Servicing policy for TELs (08/17/23)

Unless otherwise stated in the Letter of Commitment or this chapter, the Servicing of each TEL must meet the requirements of Chapters 36 and 38 through 43.

a. Servicing Spread (08/17/23)

The monthly Servicing Spread will be the servicing fee stated in the Letter of Commitment. The Servicing Spread is a fee payable under the project loan agreement. The Servicer will earn the Servicing Fee when it collects the Borrower's payments under the project note and the project loan agreement.

b. Reserved (08/17/23)

c. Subordinate financing, partial release, condemnation or easement (09/28/18)

Any required submission from the Seller to Freddie Mac regarding a proposed subordinate financing, partial release, condemnation or easement must include a summary of any applicable provisions of the documents associated with the loan transaction.

d. Advance notice of prepayment (09/28/18)

The Servicer must forward a copy of any advance notice of prepayment to the fiscal agent at the same time that the Seller forwards that notice to *Multifamily Loan Accounting*.



e. Evasion of prepayment restrictions (04/30/19)

The Servicer must notify the fiscal agent and *Multifamily Asset Management, Loan Accounting* of any attempt by the Borrower to avoid the prepayment restrictions.

25.7 Billing and collections (08/17/23)

The Servicer must diligently attempt to collect the amounts described in this section, at the times they are due and payable under the loan documents.

a. Borrower payments (08/17/23)

Three Business Days before the first Business Day of each month, the Servicer must compute and notify the Borrower of the amounts payable by the Borrower to the Servicer under the Note and project loan agreement no later than two Business Days before the first Business Day of the month in order to (i) pay to Freddie Mac all amounts due under the tax-exempt governmental note, (ii) pay to the Servicer the monthly Servicing Spread, and (iii) pay to the governmental lender and the fiscal agent their respective monthly fees, all of such payments being due on the first Business Day of the following month.

b. Reserved (08/17/23)

c. Other amounts (08/17/23)

The Servicer must diligently attempt to collect all the following, at the times they are due and payable under the loan documents:

- Any monthly replacement reserve deposit
- Any monthly Reserve deposits required by the loan documents for taxes and insurance premiums
- Any other Reserve deposits required by the loan documents

25.8 Reserves (08/17/23)

The Reserves for each TEL must meet the requirements of Chapter 52.

25.9 Application of payments (08/17/23)

Unless otherwise stated, the application of payments for each TEL must meet the requirements of Chapter 53.

a. Application of payments under the project loan agreement (08/17/23)

The Servicer must apply all payments received under the project loan agreement in the following order unless otherwise instructed by Freddie Mac:

1. To the Servicing Spread



2. To the fiscal agent's and the governmental lender's fees
3. To prepayment premiums
4. To required deposits to the Replacement Reserve
5. To required Reserve deposits
6. To Freddie Mac (or the fiscal agent, as applicable), all amounts then due under the tax-exempt governmental note
7. To default interest
8. To other amounts due under the project loan agreement and/or continuing covenant agreement

b. Reserved (09/28/18)

25.10 Remittances (08/17/23)

Unless otherwise stated, remittances for each TEL must meet the requirements of Chapter 53.

So long as the tax-exempt governmental note is unpaid and in effect, the Servicer must remit, deposit or retain the funds collected under the loan documents and the continuing covenant agreement in accordance with this section.

On the second Business Day after the Servicer receives any payments due to Freddie Mac under the loan documents and/or the continuing covenant agreement, the Servicer must remit such payments to Freddie Mac via myOptigo® Servicer Remittance system, as described in Section 53.7.

The Servicer must make any remittance to the fiscal agent by wire transfer in accordance with instructions received from the fiscal agent.

The Servicer must remit any governmental lender or fiscal agent fee payable as provided in the project loan agreement and/or funding loan agreement.

The Servicer must retain any payments or deposits required for the Replacement Reserve and any other applicable Reserves for deposit into the appropriate Custodial Account.

The Servicer may retain the Servicing Spread.

25.11 Accounting (08/17/23)

Unless otherwise stated, accounting for each TEL must meet the requirements of Chapter 54.

a. Partial payments (09/28/18)

In the event of a partial payment entailing a shortfall of over \$15 in an amount due to be remitted to Freddie Mac, the Servicer must notify *Multifamily Loan Accounting* of the shortfall. On the applicable remittance date, the Servicer must remit the partial payment to Freddie Mac, rather than holding the partial payment in suspense or escrow.



b. Mortgage payoff quotes (09/28/18)

If the Servicer receives a request for a payoff amount, the Servicer must:

- Notify the fiscal agent of all Borrower requests for a quote of a payoff amount or prepayment premium for the Mortgage
- Request a copy of any such quote from the fiscal agent
- Notify *Multifamily Loan Accounting Payoffs* of the Borrower's request

The Servicer shall not consent to a prepayment of the Mortgage without Freddie Mac's prior written consent.

c. Payoff quotes (09/28/18)

The Servicer must respond to any Borrower request for a quote of amounts due with respect to a TEL in the same manner as a request for a quote of amounts due under a Mortgage purchased by Freddie Mac under the Multifamily Conventional Cash Mortgage Purchase Program.

d. Prepayment premium quotes (09/28/18)

The Servicer must confirm with *Multifamily Loan Accounting Payoffs* the calculation of any prepayment premium before quoting it to the Borrower.

e. Reserved (08/17/23)

25.12 Reporting (09/28/18)

Unless otherwise stated, reporting for each TEL must meet the requirements of Chapter 54.

a. Loan-level transactions (09/28/18)

1. For Borrower payments received prior to the 10th day of the month, the Servicer's report of loan-level transactions must reach Freddie Mac no later than the 10th day of the month in which the Servicer receives any payment by or on behalf of the Borrower under the project loan agreement. If no payments are received, the Servicer's report must reach Freddie Mac not later than the third Business Day after the 15th day of the month. Each report of a loan-level transaction must include the following:

- Reductions in the UPB of the Mortgage since the previous month's accounting cut-off date
- Interest paid on the tax-exempt governmental note since the previous month's accounting cut-off date
- Any other amounts collected by the Servicer in connection with the transaction

The Servicer's report may be based upon information received from the fiscal agent.



2. For Borrower payments received on or after the 10th day of the month, the Servicer's report of loan-level transactions must reach Freddie Mac not later than the third Business Day after the Servicer receives any payment by or on behalf of the Borrower under the project loan agreement. If no payments are received, the Servicer's report must reach Freddie Mac not later than the third Business Day after the 15th day of the month. Each report of a loan-level transaction must include the following:

- Reductions in the UPB of the Mortgage since the previous month's accounting cut-off date
- Interest paid on the tax-exempt governmental note since the previous month's accounting cut-off date
- Any other amounts collected by the Servicer in connection with the transaction

The Servicer's report may be based upon information received from the fiscal agent.

b. Other amounts (09/28/18)

The Servicer must report, as instructed by Freddie Mac, all other amounts remitted by the Servicer that cannot be reported as part of a loan-level transaction.

c. Principal reporting errors (09/28/18)

If the Servicer erroneously reports a principal reduction, the Servicer must notify *Multifamily Loan Accounting* and request instructions on how to correct the error.

25.13 Reserved (09/28/18)

25.14 Regulatory agreement compliance monitoring (08/17/23)

The Servicer must:

- Obtain a copy of any quarterly, annual or other periodic certificate of compliance with the regulatory agreement or other evidence of compliance submitted by the Borrower to the governmental lender or its designee
- With its annual risk assessment, submit to *Multifamily Asset Management, Asset Performance and Compliance* a copy of this evidence of compliance with the regulatory agreement
- If no annual risk assessment is required by Freddie Mac, provide *Multifamily Asset Management, Asset Performance and Compliance* with a copy of evidence of compliance with the regulatory agreement within 30 days after the later of (i) the date by which the Borrower is required to submit the evidence of compliance to the governmental lender or its designee or (ii) the date on which the Borrower actually submits the evidence to the governmental lender or its designee
- Take any other steps that Freddie Mac directs to verify the Borrower's compliance with the regulatory agreement