

Multifamily Seller/Service Guide

Chapter 25A

Originating a Targeted Affordable Housing Tax-Exempt Loan under a Forward Commitment



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25A.1 Overview of Forward Commitments for Tax-Exempt Loans (08/17/23)

a. Availability of Forward Commitments (08/17/23)

This chapter provides the requirements for a Targeted Affordable Housing (TAH) Tax-Exempt Loan (TEL) originated under the TAH TEL Purchase Program pursuant to a Forward Commitment (Forward TEL). To be eligible to enter into a Forward Commitment for a Forward TEL, a TAH Seller/Servicer must meet the requirements specified in Section 3.13.

The Seller and Freddie Mac will both rely on Single Counsel for TELs. See Sections 25.2, 25A.3(d), and 25A.4 for a description of services Single Counsel may provide for a Forward TEL transaction and the fees associated with such services.

With respect to Forward 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.freddiemac.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.freddiemac.com/lenders/legal/tah-documents.html.
- Seller will be deemed to have made to Freddie Mac all of the Seller/Servicer Representations and Warranties set forth in this Guide, as well as those found on the Freddie Mac website at mf.freddiemac.com, which are incorporated by reference pursuant to Chapter 5, except that the Seller/Servicer 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. All such Seller/Servicer Representations and Warranties will be deemed to have been made as of the (1) the date of the Forward Commitment, (2) the date of Rate Lock, (3) the date of the Conversion, (4) the date on which Seller delivers the TEL to Freddie Mac, and (5) the Freddie Mac Funding Date, and all references in such Seller/Servicer Representations and Warranties to the date of "final delivery" will be deemed to refer to the Freddie Mac Funding Date.

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/Servicers.

b. Loan structure (08/17/23)

A Forward TEL requires a back-to-back loan structure. First, a construction lender 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 the construction lender, which may bear interest at a variable rate or, with the consent of bond counsel, a fixed rate. During the Permanent Phase (defined below) the tax-exempt governmental note will bear interest at a fixed rate. The governmental lender will use the proceeds of the TEL to fund a

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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 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. The construction lender is responsible for administering the TEL and the Borrower's mortgage loan during the construction phase of the improvements on the Property. Upon satisfaction of the Conditions to Conversion, the Seller will purchase the TEL from the construction lender. If Freddie Mac subsequently purchases the TEL from the Seller 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 pursuant to a Forward Commitment if it is originated for the purpose of new construction or substantial rehabilitation. However, Preservation Rehabilitation Mortgages are not eligible for Forward Commitments.

Additionally, the Property must be owned by the Borrower or under contract with the purchase date scheduled to occur within 90 days of Rate Lock.

d. Mortgage requirements applicable to Forward TELs (08/17/23)

Except as otherwise stated in this chapter, a Forward TEL must meet all of the requirements of Chapter 25. In addition, see the following sections in this Guide for additional requirements:

- Section 19A.1(c): Freddie Mac's review of construction documentation
- Section 19A.3: Forward Commitment Property Inspection
- Section 19A.4: Construction lender
- Section 19A.9: Construction Monitoring
- Section 19A.11: Complete Property Inspection



- Section 19A.17: Late delivery; nondelivery (provided, however, that the last bullet point of Section 19A.17(d) is inapplicable to Forward TELs)

25A.2 Description of a Forward Commitment (08/17/23)

A Forward Commitment provides a single source of construction and permanent financing for new construction or substantial rehabilitation of a Property that qualifies as a Targeted Affordable Housing Product. In this chapter, the term “construction” will include substantial rehabilitation. Only an Unfunded Forward Commitment is allowed in the TAH TEL Purchase Program. In an Unfunded Forward Commitment, Conversion does not occur, and Freddie Mac does not purchase the TEL, until construction has been completed and all Conditions to Conversion have been satisfied.

For a Forward TEL, the term of the “Construction Phase” begins on the Origination Date of the TEL and ends on the date of the Conversion (Conversion Date). The Conversion must occur on or before the “Forward Commitment Maturity Date” as set forth in the Forward Commitment, as such date may be extended by Freddie Mac pursuant to the terms of the Forward Commitment and the Construction Phase Financing Agreement. The term of the “Permanent Phase” begins on the Conversion Date and ends on the maturity date of the TEL. The Construction Phase and the Permanent Phase may be lengthened or shortened based on the actual Conversion Date.

The Forward Commitment is executed by the Seller and Freddie Mac. In it, Freddie Mac commits to locking the interest rate for the Permanent Phase, sets forth the maximum amount of the TEL during the Permanent Phase, determines the Forward Commitment Maturity Date, and describes any Conditions to Conversion and any conditions to its purchase of the TEL. The Seller commits to purchasing the tax-exempt governmental note from the construction lender when the project is complete and has satisfied the Conditions to Conversion. The Property must reach stabilization and meet the Conditions to Conversion set forth in Section 25A.7 before the TEL can convert to the Permanent Phase.

25A.3 Fees (08/17/23)

a. Application Fee (08/17/23)

The Seller must pay to Freddie Mac the non-refundable Application Fee, as set forth in the Forward Commitment and in Section 27.6. If, at Conversion, the Actual Loan Amount (as defined below) exceeds the Rate Locked Maximum Funding Loan Amount stated in the Confirmation Sheet, then the Seller must pay to Freddie Mac the additional Application Fee described in the Conversion Acceptance Letter delivered by Freddie Mac pursuant to Section 25A.9 (“**Conversion Acceptance Letter**”) prior to the acceptance of the Conversion Acceptance Letter.

b. Commitment Fee (08/17/23)

The Seller is obligated to pay a refundable commitment fee (“**Commitment Fee**”) to Freddie Mac in the amount set forth in the Forward Commitment. The Commitment Fee must be delivered to Freddie Mac by 2:00 p.m. Eastern Standard Time on the second Business Day following Rate Lock. At the option of the Seller, the Commitment Fee can be in the form of cash or a letter of credit. A letter of credit must satisfy the requirements set forth in Section 11.2. If the Mortgage is not delivered to Freddie Mac by the Mandatory Delivery Date in accordance with the Forward Commitment for any reason, the Commitment Fee, along with

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any interest accrued thereon, will be retained by Freddie Mac. If the Mortgage is delivered to Freddie Mac by the Mandatory Delivery Date and purchased by Freddie Mac, the Commitment Fee will be refunded in accordance with this Guide.

c. Standby Fee (08/17/23)

In addition to the Application Fee and the Commitment Fee, the Seller must pay a non-refundable standby fee (“**Standby Fee**”) to Freddie Mac in the amount set forth in the Forward Commitment, for each year (or partial year, prorated) of the Construction Phase. The Standby Fee must be delivered to Freddie Mac by 2:00 p.m. Eastern Standard Time on the second Business Day following Rate Lock.

The Seller is also obligated to pay an additional Standby Fee to Freddie Mac with respect to any extension of the Forward Commitment Maturity Date. The additional Standby Fee must be delivered to Freddie Mac concurrently with the fully executed originals of each amendment to the Forward Commitment to effectuate such extension(s).

d. Fees and expenses of Single Counsel (08/17/23)

See Section 25.2 for a description of the applicable legal fees and expenses for Single Counsel. With respect to fees and expenses for Single Counsel at Conversion, the Seller must pay the legal fees and expenses (based on actual time and hourly rates) of Single Counsel for representing both Freddie Mac and the Seller in connection with the Conversion on or before the Conversion Date. 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 in connection with Conversion. 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. See Section 25A.4 for further discussion of Single Counsel's role and documentation responsibilities in the context of Forward TELs.

25A.4 Single Counsel and Documentation Responsibilities (08/17/23)

See Section 25.2 regarding general requirements for Single Counsel in TEL. Regarding Forward TELs and Conversions of Forward TELs, the following additional provisions apply:

1. Single Counsel will prepare the Construction Phase Financing Agreement to be effective on the Origination Date. Single Counsel will also prepare the relevant Loan Documents for the transaction and will attach those documents to the Construction Phase Financing Agreement.
2. Construction Lender's counsel will be responsible for preparing its construction loan agreement, loan disbursement agreement, security instrument and project note to be in effect during the construction phase, together with its other construction loan documents.

25A.5 Conditions Precedent to Rate Lock (08/17/23)

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



- Drafts of the Loan Documents required by the Forward 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 Forward 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 Forward 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
- Evidence of final approval from the construction lender to originate the TEL

25A.6 Extending the Forward Commitment (08/17/23)

The provisions of Section 19A.10 apply, except for the following additional requirements:

- With respect to Section 19A.10(a), the first bullet point is inapplicable to Forward TELs.
- Freddie Mac may require, in its sole discretion, an opinion of bond counsel that the extension of the start date of the amortization schedule will not, in and of itself, adversely affect 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.

25A.7 Conditions to Conversion (02/22/24)

The provisions of Section 19A.12 apply to Conversions of Forward Commitments for TELs, except as otherwise stated below and in Section 25A.8. In addition, (i) wherever there is a reference in Section 19A.12 to "TAH Cash Conversion Underwriting Package", it should be deemed to mean "TAH TEL Conversion Underwriting Package" and (ii) wherever there is a reference in Section 19A.12 to 9% LIHTC, it should be deemed to mean 4% LIHTC.



a. Property requirements for Conversion (02/22/24)

1. Title and Survey

Freddie Mac will have received each of the following meeting the requirements of this Guide and otherwise acceptable to Freddie Mac:

- An update to the analysis of and recommendation as to the exceptions to title from the Seller and Single Counsel
- A commitment to insure together with a pro-forma endorsement for the final date-down endorsement for the title policy or a pro-forma for a new title policy, in either case insuring the lien of the Security Instrument, as amended and restated on the Conversion Date, which endorsement or policy contain no exceptions to title, except as may be approved by Freddie Mac and otherwise in conformance with Freddie Mac's then-current title requirements
- An ALTA "as-built" survey of the completed construction and/or rehabilitation of the Improvements on the Property, prepared by a licensed surveyor, certified to the Seller, Freddie Mac and the title insurance company and which will otherwise conform with Freddie Mac's then-current survey requirements

2. Execution and Recordation of Documents

The release or assignment to the Seller of any security interest of the construction lender must have been executed and recorded or delivered in escrow for recording under arrangements satisfactory to Freddie Mac, as applicable.

b. Amortization Schedules (08/17/23)

Unless Conversion occurs on the Forward Commitment Maturity Date and at the Rate Locked Maximum Funding Loan Amount stated in the Confirmation Sheet, the Servicer will have prepared and delivered to Freddie Mac (with a copy to the fiscal agent) replacement amortization schedules for the project note and the tax-exempt governmental note.

c. Requirements of Other Parties (08/17/23)

All conditions to Freddie Mac's purchase of the tax-exempt governmental note set forth in the Loan Documents and all other requirements of the governmental lender, the fiscal agent and the construction lender in connection with Conversion must have been satisfied.

d. Opinion of counsel to Borrower and Guarantor (08/17/23)

Freddie Mac and the Seller will have received a final form of an opinion of counsel to the Borrower and Guarantor in form and substance acceptable to Freddie Mac and the Seller.

e. Opinion of bond counsel (08/17/23)

The governmental lender, the fiscal agent, Freddie Mac and the Seller will have received an opinion of bond counsel to the effect that the occurrence of Conversion will not, in and of itself,



adversely affect 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.

f. Termination of Completion Guaranty (08/17/23)

Any guaranty of completion executed by the Borrower, any Borrower Principal, any partner of the Borrower (if Borrower is a partnership), any member of Borrower (if Borrower is a limited liability company), the Borrower Principal(s) or the Guarantor, will terminate on the Conversion Date.

g. Other Conversion Criteria (08/17/23)

Any special terms or conditions specified in the Forward Commitment and in the Construction Phase Financing Agreement must be satisfied.

25A.8 Determination of Actual Loan Amount; Mandatory paydown (02/22/24)

a. Actual Loan Amount (08/17/23)

At Conversion, Freddie Mac will have determined the amount of the TEL which will be outstanding as of the Conversion Date, in its sole discretion, using Freddie Mac's underwriting standards and criteria as of the Conversion Date ("**Actual Loan Amount**"). Unless approved in writing by Freddie Mac, which waiver will be made by Freddie Mac in its sole discretion, the Actual Loan Amount will not exceed the Rate Locked Maximum Funding Loan Amount and will not be less than the Minimum Loan Amount at Conversion, each as set forth in the Confirmation Sheet.

If the Actual Loan Amount is (i) less than the Rate Locked Maximum Funding Loan Amount or (ii) less than the Minimum Loan Amount at Conversion and Freddie Mac, in its sole and absolute discretion, has nevertheless agreed to purchase the TEL, then the Borrower must demonstrate to Freddie Mac's satisfaction, in its sole and absolute discretion, that the Borrower has secured a source of funds acceptable to Freddie Mac ("**Additional Source of Funds**"), to cover the difference between the outstanding principal amount of the TEL and the Actual Loan Amount ("**Loan Differential**").

If the Borrower has the necessary funds or can secure an Additional Source of Funds to fund payment of the Loan Differential, the Borrower must make a prepayment of a portion of its mortgage loan so as to cause a corresponding prepayment of the TEL on or prior to the Conversion Date in an amount equal to the Loan Differential. Moreover, if the Borrower will incur additional debt to cover all or a portion of the Loan Differential in order to effectuate a paydown of the TEL, such additional debt must be subordinated to the TEL, and the terms, conditions and documentation of the additional debt must meet the requirements for Subordinate Financing set forth in this Guide.

b. Additional Actual Loan Amount (02/22/24)

If upon completion and lease up of the Property, the performance of the Property exceeds the pro-forma rents, occupancy and other criteria used by Freddie Mac to underwrite the TEL prior to the issuance of the Forward Commitment, the Seller may request at the time Seller delivers



its TAH TEL Conversion Underwriting Package that the Actual Loan Amount be increased beyond the Rate Locked Maximum Funding Loan Amount as set forth in the Confirmation Sheet by an amount that does not exceed the Additional Actual Loan Amount Percentage listed in the Confirmation Sheet (or, if not listed in the Confirmation Sheet, then 10%) (the **“Additional Actual Loan Amount Percentage”**) of such Rate Locked Maximum Funding Loan Amount (any such increase referred to as the **“Additional Actual Loan Amount”**); provided, however, in no event will the Actual Loan Amount at Conversion exceed the amount of the TEL outstanding immediately prior to Conversion.

In connection with any such request, Seller will include in its TAH TEL Conversion Underwriting Package each of the following:

- Seller’s calculation of the Actual Loan Amount supporting the requested Additional Actual Loan Amount based on the performance of the Property
- A new Appraisal which complies with the requirements of Chapter 60, and which Appraisal supports the requested Additional Actual Loan Amount

Freddie Mac’s approval of any Additional Actual Loan Amount will be made in Freddie Mac’s discretion based on its underwriting criteria at the time of such request.

To the extent the requested Additional Actual Loan Amount is approved by Freddie Mac:

- The interest rate on such Additional Actual Loan Amount will be equal to the Permanent Phase Interest Rate determined at Rate Lock and specified in the executed and delivered Confirmation Sheet
- The Conversion Acceptance Letter delivered by Freddie Mac will set forth (i) the Additional Actual Loan Amount so approved and (ii) any other updated terms and conditions related to the Additional Actual Loan Amount (including the payment of an Application Fee related thereto) or otherwise with respect to the TEL
- Such approval is conditioned the opinion of bond counsel referenced in Section 25A.7(e) including an opinion to the effect that each of the increased Actual Loan Amount and revised amortization schedule delivered pursuant to Section 25A.7(b) will not, in and of themselves, adversely affect 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

25A.9 TAH TEL Conversion Underwriting Package and Conversion Acceptance Letter (08/17/23)

The provisions of Section 19A.13(b) and 19A.13(d) apply, except that (i) wherever there is a reference to “TAH Cash Conversion Underwriting Package”, it should be deemed to mean “TAH TEL Conversion Underwriting Package” and (ii) wherever there is a reference to “Actual Mortgage Amount” or “Additional Actual Mortgage Amount”, such reference should be deemed to mean “Actual Loan Amount” or “Additional Actual Loan Amount”, respectively.



25A.10 Loan Documents to be used at Conversion (08/17/23)

The provisions of Chapter 25 apply regarding the Loan Documents in TEL, with the exception that a Forward TEL must be documented using the forms of TEL loan documents which were published at mf.freddiemac.com/lenders/legal/tah-documents.html at the time of the Forward Commitment Rate Lock, and as attached to the Construction Phase Financing Agreement.

25A.11 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 – Conversion of Unfunded Forward Tax-Exempt Loan.

25A.12 Assignment (08/17/23)

Freddie Mac will have the right to assign or otherwise transfer the Forward Commitment, or any mandatory Purchase Contract resulting from the Forward Commitment, to any affiliate or subsidiary of Freddie Mac without the consent of Seller/Service ("Freddie Mac Assignment"). After a Freddie Mac Assignment, all references to Freddie Mac in the Forward Commitment, Purchase Contract, or in this Guide will be deemed to refer to the affiliate or subsidiary of Freddie Mac to which the Freddie Mac Assignment is made.