Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

March 21, 2017

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

Federal Housing Finance Agency
Office of General Counsel
400 7th Street, S.W.
Eighth Floor
Washington, D.C. 20219

Re: FHFA January 2017 Request for Input – Duty to Serve Underserved Markets -- Support for Chattel Financing of Manufactured Homes

Dear Sir or Madam:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade association representing producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5401, et seq.). MHARR's members are primarily smaller and medium-sized independent producers of manufactured housing located throughout the United States.

In January 2017, the Federal Housing Finance Agency (FHFA), as an adjunct to its December 29, 2016 final rule implementing the Duty to Serve Underserved Markets (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA), issued a Request for Input (RFI) seeking "public input on considerations that Fannie Mae and Freddie Mac (the Enterprises) should include in their determinations of whether to include manufactured home chattel loan pilot [programs] in their Duty to Serve Underserved Markets Plans, and if so, how such pilots could be designed, taking into account policy and safety and soundness considerations."[1] The RFI contains five areas of inquiry and related questions. In connection therewith, the RFI provides: "Interested parties may address any or all of the following subjects and questions, in addition to raising and addressing other issues related to the Enterprises pursuing a chattel loans pilot."[2]

[1] See, RFI at p. 2.
[2] Id. at p. 4.

For its response to the RFI, MHARR attaches and hereby incorporates by reference herein: (1) the statement of its President and CEO, Mark Weiss, as offered and presented to FHFA at its February 8, 2017 DTS/FHFA "listening session" in Washington, D.C. (attached); (2) its written DTS statement as offered and presented at the January 25, 2017 DTS/FHFA "listening session" in Chicago, Illinois (attached); and (3) its March 15, 2016 written comments on the December 18, 2015 FHFA-proposed DTS implementation rule (previously filed in the DTS rulemaking docket).

In relevant part, MHARR, in these documents, rejects the concept of a limited, discretionary manufactured home chattel "pilot program" or "programs" as authorized by the December 29, 2016 FHFA final rule. Instead, as is further addressed, detailed and explained therein, MHARR seeks "a revised and reformed DTS implementation rule [that would] specifically authorize and mandate a series of Enterprise-securitized chattel loans in volume, staggered over multi-year periods, so that they can be analyzed and evaluated every three years for any adjustment as warranted for the next series. Given the high demand by very low, low and moderate-income consumers for such Enterprise-securitized loans -- and the estimated 250,000 empty spaces in existing manufactured home communities – this type of program would not only meet the full DTS obligations of the Enterprises, but would make affordable homeownership immediately available to millions of Americans."

MHARR otherwise restates and reaffirms the comments set forth in the above-referenced and incorporated documents.

Sincerely,

Mark Weiss
President and CEO

cc: Manufactured Housing Industry Post-Production Members (without attachments)

MHARR PRESENTATION BY PRESIDENT AND CEO MARK WEISS
TO THE FEBRUARY 8, 2017 DUTY TO SERVE LISTENING SESSION

I appreciate the opportunity to appear and speak here today.

I also appreciate the fact that FHFA is conducting these listening sessions, although I think that they could be more constructive as a dialogue, rather than primarily listening to statements from stakeholders.

I also want to thank Freddie Mac for forming a Manufactured Housing Initiative Task Force, and MHARR is pleased to be participating in its work as a member.

That said, however, I must reiterate the central thrust of the comments already made by MHARR representatives – Edward Hussey, former Chairman and Danny Ghorbani, former President and Senior Advisor – at the January 25, 2017 listening session in Chicago. And that is quite simply, that while the final DTS implementation rule theoretically represents a slight improvement over both the 2010 and 2015 proposed rules, any DTS "implementation" that does not include material and timely (i.e., expedited) Enterprise securitization and secondary market support for manufactured housing chattel loans does not and cannot fulfill the mandate of DTS for very low, low and moderate-income consumers, and therefore remains unacceptable to our members and our organization.

Insofar as the Trump Administration's January 20, 2017 regulatory "freeze" order clearly applies to this matter (insofar as it applies to all regulatory actions already published in the Federal Register that had not "taken effect" prior to January 20, 2017 and the December 29, 2016 DTS final rule, on its face, states that it is effective January 30, 2017), FHFA should use that delay, in conjunction with the additional input, information and views that you are receiving from stakeholders, to – at a minimum – revise your evaluation guidance (and the final rule itself) to provide for an expedited path to manufactured home chattel loan securitization and secondary market support.

The reason is straightforward and compelling if you look at the history of the Enterprises regarding support – or more accurately non-support -- for manufactured home consumer lending and both the history and language of the DTS provision itself.

The DTS provision is manifestly remedial legislation designed to correct and reverse the Enterprises long-standing failure and/or refusal to serve the three enumerated markets. As such, established judicial precedent holds that it is to be construed in a broad and liberal manner. But that is not – and has not -- been the case with DTS through this entire administrative proceeding, including both of the proposed rules and the final rule itself.

A remedial statute with a mandatory directive – such as DTS -- is not a congressional invitation for stasis; for maintaining the fundamental *status quo* for one or more decades, or indefinitely.

It is a mandatory directive to change and correct the *status quo ante* in a material fashion and in a timely way in order to provide a meaningful remedy for those who have been – and are being --

underserved in a way that is fundamentally discriminatory, and Congress has determined, and has legislated, must end.

Judged against this benchmark, FHFA has already failed and must materially alter the course established by its "final" rule with respect to manufactured housing and specifically with respect to manufactured home chattel loans.

First, consumers in need of immediate access to affordable housing and the inherently affordable non-subsidized home ownership that manufactured housing provides – as recognized by Congress through DTS and pre-existing federal manufactured housing law -- have effectively been denied a DTS remedy of any kind for nearly a decade already.

Over that time, there has been no cognizable progress made – at all – in meeting Congress' directive. As is shown by the final rule, by FHFA's January 13, 2007 Evaluation Guidance document and by FHFA's subsequent Request for Information (RFI), information that could have been solicited and/or developed years ago, is just being sought now, with years more of delays likely to follow – under the final rule as currently constituted -- before any concrete relief for consumers, if any, will even be possible.

Nor is any of this altered by the FHFA conservatorship of the Enterprises dating to 2008. Indeed, with the Enterprises under the *de facto* and *de jure* control of a federal government agency, like FHFA, the failure to comply with a specific statutory directive is more egregious, not less.

Consumers who have been denied a remedy to a congressionally-identified and discriminatory failure to serve by the Enterprises cannot and should not be denied that remedy for years more pending study, evaluation and supposed "outreach" with no guarantee of any concrete results whatsoever.

Second, the language of DTS makes it abundantly clear that it is designed to change the unacceptable *status quo* by bringing about new products and new programs to serve consumers within the identified markets, and not just re-packaging or re-branding existing products or existing programs.

Specifically, the first manufactured housing section of DTS (12 U.S.C. 4565 (a)(1)(A)) states that the Enterprises "shall *develop* loan products" for designated manufactured housing consumers. The directive to "*develop*" loan products for manufactured housing would not have been necessary if the Enterprises already had adequate "loan products" for the manufactured housing market, and clearly demonstrates that Congress' objective – and mandate – was to have the Enterprises (given their history) establish new loan products that would properly serve those consumers.

Even accepting that one of the Enterprises has, in the past, provided highly-limited securitization and secondary market support for manufactured housing real estate loans, which Congress is presumed to know, the new Enterprise products to be developed under DTS must necessarily be for manufactured housing chattel loans. Viewed this way, as a "broad and liberal" construction of a remedial statute such as DTS would demand, the proviso regarding manufactured housing chattel

loans set forth in 12 U.S.C. 4565 (d)(3) is not a permissive but rather an adjunct and clarification of the mandatory "duty" established by DTS.

The implementation of DTS, however, established under the FHFA final rule and evaluation guidance fails to mandate any securitization or secondary market support for any type of manufactured housing loan, either real estate or chattel. Rather, the rule and guidance require only that the Enterprises "consider" such support, which would include refusing to provide any such support, with an "explanation" of that refusal.

This fundamentally fails the directive of Congress. If Congress had intended the "*duty*" to serve to be optional, it would not have called it a "duty," which involves and entails a mandatory obligation. Nor did Congress call DTS the "Duty to Study." Studying a failure to serve already identified and targeted for rectification by Congress is an excuse for inaction and preservation of the unacceptable *status quo*, not an assured predicate for a remedy already prescribed by statute.

In addition to unacceptable delay and the failure to mandate any type of concrete remedy that would actually benefit the consumers identified by DTS, the final rule and guidance could and, in fact would, leave upwards of 80% of the manufactured housing market represented by chattel placements unserved either indefinitely or – potentially – forever.

The 80% of the manufactured housing market represented by such chattel placements (according to U.S. Census Bureau data), moreover, involve the industry's most affordable homes – specifically the types of homes that would be most affordable for the very low, low and moderate-income homebuyers targeted by DTS for financing relief.

Chattel placements, furthermore, represent an expanding segment of the overall manufactured housing market, having increased from 64% of all placements in 2007 to 80% of all placements in 2015 – a 25% increase.

Very simply, a DTS implementation rule that could -- and likely would – leave 80% or more of the congressionally-designated DTS remedy market unserved indefinitely, while simultaneously failing to expand support on a material and mandatory basis for the remaining 20% or less of the manufactured housing market represented by real estate placements, does not and necessarily cannot comply with Congress' mandate for a meaningful remedy to the Enterprises' established failure to serve the manufactured housing market.

The final rule thus represents a continuation of the unacceptable situation that Congress sought to remedy via DTS. As other speakers before me, who are manufactured housing finance experts have indicated, this entails material harm for the very consumers that Congress targeted for relief under DTS. Among other things, many of those consumers are – and will continue to be -- needlessly excluded from the manufactured housing market and from home ownership altogether because of the lack of GSE securitization and secondary market support for manufactured housing chattel loans. The failure to implement DTS via mandatory securitization and secondary market support for manufactured home chattel loans also effectively forces consumers that are not altogether excluded from the market, into higher-cost loans that benefit only a small number of industry-dominant finance companies. This translates into higher monthly payments, which

require higher incomes to qualify for financing. (While higher-cost loans may be necessary for less-qualified or higher-risk borrowers, they have instead become the norm for the manufactured housing market due to the GSEs' failure to provide securitization and secondary market support for such loans). It also means artificially restricted competition within the manufactured housing finance market, which limits consumer choice and consumer financing options, and also underlies higher than necessary interest rates for such chattel loans.

The extremely damaging impact of this for consumers across the nation is only highlighted by recent housing statistics which simultaneously show record high prices for all homes – up 5.6% in November 2016, while home ownership continues to fall – now at 63.7% in the fourth quarter of 2016. At the same time, surveys show that "young Americans are losing confidence in their prospects for buying a home," while the number one factor cited for this pull-back from home ownership is the "lack of affordability" as stated by the chief economist of the National Association of Home Builders.

All the while the single most affordable source of home ownership – manufactured housing – is subject to continuing financing discrimination under the final rule adopted by FHFA.

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A permissive DTS approach to manufactured housing chattel loan support as outlined in the final rule and as further elucidated in the Duty to Serve Evaluation Guidance is not the answer for American consumers in need of affordable housing opportunities now. Consumers have already waited nine years since the enactment of DTS and cannot afford to wait years longer for results based on study, "outreach" and other substitutes for the actual support of manufactured housing chattel loans.

Nor would a limited manufactured housing chattel loan "pilot program" of the type authorized by the DTS final rule and Evaluation Guidance solve the fundamental deficiencies that DTS was designed to remedy -- and would be a prescription for ultimate failure because: (1) it would inevitably be too small, too limited, too restrictive (and too late) to serve a meaningful segment of the consumers that DTS was designed and intended to benefit; and (2) it would inevitably be too small, too limited, too restrictive (and too late) to properly measure or gauge success in a market comprised of millions of Americans. It is a known fact that Washington, D.C. is historically and traditionally the graveyard of "pilot" and "demonstration" projects – with the result that good laws are either stalled, circumvented or ultimately undermined. Such programs only work when the parameters and scope of a project are fully-established in law by Congress– which is not the case in this instance.

Consequently, the current FHFA final DTS implementation rule should be withdrawn and recalled for fundamental reform by FHFA. In place of a limited, voluntary "pilot" DTS chattel program, a revised and reformed DTS implementation rule should specifically authorize and mandate a series of Enterprise-securitized chattel loans in volume, staggered over multi-year periods, so that they can be analyzed and evaluated every three years for any adjustment as warranted for the next series. Given the high demand by very low, low and moderate-income consumers for such Enterprise-securitized loans -- and the estimated 250,000 empty spaces in existing manufactured home

communities – this type of program would not only meet the full DTS obligations of the Enterprises, but would make affordable homeownership immediately available to millions of Americans.

Absent such a robust program that would be fully compliant with both the letter and intent of DTS, the current FHFA DTS final implementation rule will only create more confusion and delay to the detriment of homebuyers, and force the return of DTS stakeholders to Congress for necessary corrections.

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THE FHFA DUTY TO SERVE FINAL RULE IS UNACCEPTABLE AS IT SHOULD INCLUDE A DEFINITIVE CHATTEL LOAN SECURITIZATION PROGRAM

Congress, to remedy the historical failure of the Government Sponsored Enterprises (Enterprises) to provide meaningful secondary market and securitization support for purchasers of federally-regulated manufactured housing, directed the GSEs (and the Federal Housing Finance Agency – FHFA – as their federal regulator), via the Duty to Serve Underserved Markets (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA) to "develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low, low and moderate-income families." Congress, in addition, prior to the final passage of HERA, included language leaving no doubt that DTS embraced both manufactured housing real estate and personal property (chattel) loans. (MHARR March 15, 2016 written comments on proposed FHFA DTS implementation rule – MHARR Comments – at p. 10.) *

Both the express language and remedial nature of DTS (and HERA) make it unmistakable that the "duty" which it establishes is statutory in nature and mandatory for the Enterprises and FHFA. As a result, the fundamental character and directive of DTS cannot be altered or diminished via administrative, regulatory, or other activity by either the Enterprises or FHFA.

Based on the scope and nature of the mandatory statutory "duty" established by Congress via DTS, the final DTS implementation rule developed and promulgated by FHFA -- by failing to ensure Enterprise secondary market and securitization support for manufactured housing chattel loans – is insufficient, patently inadequate to serve the historically underserved (or unserved) needs of very low, low and moderate-income consumers of affordable manufactured housing, and is, therefore, unacceptable.

This unacceptable failure – particularly during an extended affordable housing crisis and nine years after congressional passage of HERA -- encompasses two elements that must both be resolved in order to arrive at an ultimate DTS implementation rule that would satisfy the express mandate and manifest intent of Congress. These elements are: (1) the failure of the current final DTS rule to provide for the mandatory securitization and secondary market support of manufactured home chattel loans by the Enterprises on a scale and within an expedited timeframe sufficient to meaningfully impact and expand the manufactured housing finance market for the benefit of statutorily-defined consumers, pursuant to a specific defined structure and performance metrics; and (2) the failure of the current final rule to provide a mandatory and meaningful enforcement mechanism for any failure by the Enterprises to comply with the "duty" established under element 1, above.

Manufactured housing consumer chattel loans, in accordance with data maintained by the U.S. Census Bureau, comprise the vast bulk of all purchase loans for federally-regulated manufactured homes – i.e., 80%. The percentage of chattel placements, moreover, is growing and has grown significantly – by 25% -- since the most recent Census Bureau measuring period began in 2007 (MHARR Comments, Attachment 2.) * Given the fact that manufactured home chattel loans, moreover, typically cover only the cost of the home itself (instead of a combination of the home and real estate upon which the home is sited), they offer DTS-beneficiary consumers the most affordable financing access to the nation's most affordable homes, based again on Census Bureau data (MHARR Comments at p. 11.) *

The current final DTS implementation rule, by failing to provide for mandatory and enforceable Enterprise secondary market and securitization support for manufactured housing chattel loans, thereby abandoning and leaving unserved 80% (or more) of the manufactured housing market – and any Enterprise Underserved Markets Plan (Plan) that fails to include mandatory, meaningful and expedited support for such loans – does not and patently cannot satisfy the "duty" to serve as prescribed by Congress.

(OVER)

This failure, by FHFA and the Enterprises, which historically have never shown any interest in providing secondary market or securitization support for manufactured housing and particularly the huge market segment financed through chattel loans – thereby prompting the mandatory "duty" to serve – and do not understand, comprehend, or grasp either manufactured housing or the manufactured housing finance market, would allow and continue to facilitate the entrenched Enterprise discrimination that continues to fundamentally distort the manufactured housing finance market. Moreover, the Enterprises' refusal to acknowledge the significant impact of the landmark Manufactured Housing Improvement Act of 2000 in strengthening consumer protection and satisfaction, also improperly sustains a negative perspective regarding the proven role and viability of chattel loans in today's manufactured housing finance market.

Enterprise discrimination against manufactured housing – contrary to the full parity legislated by Congress in the Manufactured Housing Improvement Act of 2000 -- leaves the manufactured housing finance market and manufactured housing consumers without the benefit of full competition. This effectively forces consumers into higher-rate loans than would otherwise characterize a fully competitive finance market. While higher-rate manufactured home chattel loans (on the order of 9-10% for an average term of 7-18 years) can be and sometimes are necessary in order to serve higher-risk borrowers, they have – due to the absence of Enterprise secondary market and securitization support – gradually become the norm within the manufactured housing financing market, a condition that artificially restricts access to and the availability of affordable manufactured housing, needlessly excludes millions of Americans from the benefits of home ownership and, under the current FHFA DTS rule, will only grow worse.

A permissive DTS manufactured housing chattel "pilot program" as outlined by FHFA in its final rule and as further elucidated in its Duty to Serve Evaluation Guidance -- 2018-2020 Plan Cycle (Evaluation Guidance) is not the answer for American consumers in need of affordable housing opportunities now and, as structured, cannot and will not become the basis for a manufactured housing chattel program that would fully comply with DTS. Consumers have already waited nine years since the enactment of DTS and cannot afford to wait years longer for results based on trial and error with a limited number of loans under such a "pilot program."

A manufactured housing chattel loan "pilot program" of the type authorized by the DTS final rule and Evaluation Guidance will not solve the fundamental deficiencies that DTS was designed to remedy and is a prescription for ultimate failure because: (1) it would inevitably be too small, too limited, too restrictive (and too late) to serve a meaningful segment of the consumers that DTS was designed and intended to benefit; and (2) it would inevitably be too small, too limited, too restrictive (and too late) to properly measure or gauge success in a market comprised of millions of Americans. It is a known fact that Washington, D.C. is historically and traditionally the graveyard of "pilot" and "demonstration" projects – with the result that good laws are either stalled, circumvented or ultimately undermined. Such programs only work when the parameters and scope of a project are fully-established in law by Congress– which is not the case in this instance.

Consequently, based on all of these fatal deficiencies, the current FHFA final DTS implementation rule should be withdrawn and recalled for fundamental reform by FHFA. In place of a limited, voluntary "pilot" DTS chattel program, a revised and reformed DTS implementation rule should specifically authorize and mandate a series of Enterprise-securitized chattel loans in volume (i.e., thousands), staggered over multi-year periods, so that they can be analyzed and evaluated every three years for any adjustment as warranted for the next series. Given the high demand by very low, low and moderate-income consumers for such Enterprise-securitized loans -- and the estimated 250,000 empty spaces in existing manufactured home communities – this type of program would not only meet the full DTS obligations of the Enterprises, but would make affordable homeownership immediately available to millions of Americans.

Absent such a robust program that would be fully compliant with both the letter and intent of DTS, the current FHFA DTS final implementation rule will only create more confusion and delay to the detriment of homebuyers, and force the return of DTS stakeholders to Congress for necessary corrections.

*MHARR'S DTS COMMENTS CAN BE VIEWED AT:
https://www.fhfa.gov/SupervisionRegulation/RegulationFederalRegister/Pages/Rules-Notices.aspx