Clayton homes

March 17, 2017

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

RE: Chattel Financing of Manufactured Homes Request for Input

Ladies and Gentlemen:

Clayton Homes (Clayton) is one of this country's largest manufacturers and retailers of manufactured homes. Through our sister company, Vanderbilt Mortgage and Finance, Inc., we are also one of the largest mortgage lenders that offer financing to consumers for the purchase of manufactured homes through chattel mortgages.

The Duty to Serve requirements that were imposed on Fannie Mae and Freddie Mac (Enterprises) by the Housing and Economic Recovery Act of 2008 (HERA – HERA Section 1129) represent a significant element of the Enterprises' role in the market to facilitate a broad, liquid, and stable national housing market accessible to all credit-worthy borrowers. Clayton fully supports FHFA's Duty to Serve Final Rule (Final Rule). We believe it is a positive step towards improving the availability of mortgage credit and affordable homeownership options in underserved markets.

Clayton appreciates the opportunity to provide comments on the possible opportunities available to improve chattel financing terms and conditions for very low-, low, and moderate-income families through the Enterprises' purchase of chattel loans in a safe and sound manner under the Final Rule published on December 29, 2016. We also are pleased to submit comments in response to FHFA's January 2017 Request for Input (RFI) on Enterprise purchases of chattel manufactured home loans.

In order to assist in the creation of a viable secondary market for chattel secured mortgage loans, Clayton strongly recommends that FHFA significantly consider the chattel loans pilot as the Enterprises develop their Underserved Markets Plans. Specifically, FHFA and the Enterprises should consider the following as their plans are developed and evaluated:

A. In the initial phase of the DTS manufactured housing implementation, an Enterprise should not receive a minimally passing performance rating from FHFA unless the Enterprise carries out a pilot program to purchase a substantive amount of chattel loans. We recommend that the substantive amount should be between $150 and $200 million by each Enterprise, and

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B. The pilot program should consist of a representative sample of the market by including a cross section of loans varied by new home purchases, refinances, and pre-owned home resales, seasoned loans held in portfolio, and varied by geography as well as socio-economic diversity.

In later phases, assuming performance of the loans in the pilot phase demonstrate that chattel loans can be safe and profitable, such purchases should be expanded significantly.

It is our opinion that the Enterprises cannot satisfy the manufactured housing duty to serve requirement without conducting a chattel pilot program. In order to be truly meaningful the chattel pilot program must be representative of the market as a whole and be based on principles of socioeconomic and geographic diversity. Absent the creation of a viable secondary market for chattel loans, the Enterprises will remain unable to meaningfully contribute to increased options for consumers seeking homeownership in the manufactured housing market and critical access to credit for these consumers.

Our responses to the Request for Input are submitted along with this letter.

Very Truly yours,

F. Brad Bush
Associate General Counsel
Clayton Homes

DUTY TO SERVE REQUEST FOR INPUT

Sources of Chattel Loan Financing

1. Describe the current sources of financing for chattel loans in the primary market (e.g., mortgage companies, federally insured depository institutions, manufactured housing community owners, specialized finance companies):

   Chattel loans are currently offered by very few lending sources, relative to the sit-built housing market. In general terms, there are non-bank mortgage lenders that offer chattel financing (e.g., 21st Mortgage Corporation, Vanderbilt Mortgage and Finance, Inc., Cascade Financial Services. There is also at least one credit union, San Antonia Federal Credit Union, that offers chattel loans. Very few national and regional banks originate a significant number of chattel loans (based on speculation, some may offer a chattel loan here and there for an existing bank customer).

2. What are their relative market shares?

   We are unaware of a particular source of information for the market share of chattel lenders. The federal HMDA data can be used to determine lenders that reported originating loans secured by manufactured homes. For example, in 2015, approximately 11 lenders reported more than 1,000 loans secured by Manufactured Homes. However, the HMDA reporting does not distinguish between chattel-secured and real estate-secured loans. One distinction to make is whether a lender offers purchase financing only or purchase and refinance financing.

   The 2015 Census information provides some details for manufactured home sales. For example, that Census data shows that of 2015 manufactured housing shipments:

   - Multi-Section = 54.3%, Single Section = 45.7%
   - Located on private property = 66%, located in park = 34%
   - Titled as private property = 80%, titled as real estate = 14%
   - Texas is the largest state in the number of shipments.

3. Are there geographic or regional differences in funding sources? How is financing concentrated geographically?

   In general, purchase financing for chattel lending occurs mostly in the states where manufactured homes are sold – primarily the Southeast and Southwest. Additionally, some states have more manufactured housing business operating communities (i.e., manufactured home parks) where chattel financing will be more prominent (e.g., California, Michigan, Florida, Arizona).

4. Describe the current sources of financing for owner-occupied and for investor-owned chattel loans in the secondary market (e.g., hedge funds, individual private investors, real estate investment trusts?)

Generally speaking, there is very little, if any viable support for chattel loans on the secondary market. The FHA Title I program offers an opportunity for selling loans to Ginnie Mae. We do not have any information as to private secondary channels. Most, if not all, lenders that originate chattel loans must find a way to hold the loans on balance sheet.

5. What types of financing providers do not participate in the chattel market?

   Regional and national depository institutions do not participate in the chattel market in a meaningful way. One of the reasons for this absence from the primary market is the lack of a secondary market. Of the lenders that do participate in the manufactured housing market, nearly all only participate in providing real estate-secured loans only – this includes banks, credit unions, etc.

6. What is the appropriate role that the Enterprises could play in broadening that market?

   The Enterprises can create a chattel loan program that allows for the purchase of chattel loans so that more lenders can consider entering into the chattel market (i.e., provide a secondary market, etc.). The Enterprises could expand the market by offering to purchase chattel loans from such institutions and by paying servicing fees commensurate with the high-touch servicing typically required for these loans. The program must account for the unique customer base for chattel lending, consistent with the Duty to Serve rule (e.g., lower income, broader credit spectrum, etc.) in order to provide a meaningful impact on the market and the consumers.

7. What risks should be considered in expanding into this market?

   The risk for new market entrants, beyond those facing current market participants, is a lack of familiarity with the dynamics of relationships between community operators and chattel lenders, the titling and lien perfection laws and the default servicing laws that differ from mortgage lending laws. Those differences can be briefly described as follows:

   Titling and Lien Perfection. A manufactured home can be personal property, a fixture or real property. When a manufactured home leaves the factory, or sits for sale on a retailer's sales lot, it is personal property. Moreover, the majority of homes are sold and financed as personal property. Many are installed on leased sites in manufactured home communities, readily removable. Every state has laws that govern conveying and encumbering manufactured homes as personal property. No two are the same.

   In forty-four (44) states, a certificate of title determines ownership of and perfection of a security interest in a manufactured home ("Title States"). The remaining states do not issue a certificate of title for manufactured homes. In seven (7) states (including the District of Columbia), filing a UCC-1 financing statement together with a UCC-1Ad perfects a security interest in a manufactured home ("UCC States"). Two states require both a certificate of title and a UCC filing. In three (3) states in transition from "UCC" to "Title", the method of conveyance and encumbrance depends on the home's year of manufacture.

   Chattel Lenders and Community Operators. Chattel lenders typically obtain consumer consent in their loan documentation to the exchange of information between the landlord and the lender about the status of site lease and loan payments. Manufactured home communities typically do not perform collection services for lenders because of debt collector licensing requirements. However, lenders and communities frequently enter into "Park Agreements" whereby lenders may sell repossessed homes in place. The responsibility for rehabilitation and maintenance of the home is apportioned between the parties to the agreement. In addition, payment of leasehold rent pending resale of the home is addressed and sales commissions set. Many chattel lenders will consign repossessed homes to the communities or affiliated retailers for resale.

Default Servicing of chattel loans. The process for repossessing and reselling a manufactured home that secures a chattel loan, although similar in many ways to the process of foreclosing on real property can be very different. In many respects, it can be the same or similar to the process state law requires for the repossession and reselling of motor vehicles.

8. What role do manufactured home dealers and manufacturers currently have in financing purchases of manufactured homes?

   Due to state mortgage loan originator licensing requirements retailers and manufacturers are not involved in originating chattel loans. From our prospective retailers provide information about homes – price, types, features, etc. – that consumers can consider as they are applying for financing through a licensed mortgage originator that is sponsored by a licensed mortgage lender.

Origination of Chattel Loans

9. Describe currently available home purchase and refinance chattel loan products, including their terms and features, e.g., amortization, credit score requirements, down payment requirements, fixed or variable rate interest.

   Our current chattel purchase loan offering includes fixed-rate, fully amortizing loans with no "exotic" features. The average term to maturity for our chattel lending in 2016 was approximately 22 years. We offer a broad range of credit score and down payment options for consumers.

10. Is there an industry standard used to value a used chattel-financed home?

    Currently, NADA and DataComp offer manufactured home valuation services for new and used home sales.

11. Describe current chattel loan and collateral documentation and variations, and discuss challenges to standardizing loan and collateral documentation.

    By collateral documentation, we assume you mean documentation relating to lien perfection, ownership conveyance, etc. For manufactured homes, each state has a certificate or title or similar law (e.g., Texas has a Statement of Ownership process) that defines how chattel homes are conveyed and liens secured, released, etc. These laws are very straight-forward and could be summarized for use of Enterprise-approved lenders.

Borrower and Tenant Protections

12. What protections for chattel loan borrowers should be required beyond those currently provided by federal, state, and local law, and how should those protections be overseen?

Current state and federal laws provide many protections for chattel loan borrowers. As with the current Enterprise programs for other forms of lending, the Enterprise selling and servicing guides can provide any additional protections deemed necessary for chattel loan originations and servicing. One thing to keep in mind – since chattel loans are much smaller than typical site-built lending, all additional requirements add costs to the transaction and the consumer. At some point, the costs become too great as a percentage of the loan amount to make the transaction worth the time for the lenders and/or the enterprises.

Credit Enhancements, Standardization, and Risk Sharing

13. What third party credit enhancements (e.g., letters of credit) might be available for chattel loans or securities backed by chattel loans? Which entities are the potential providers of these credit enhancements, and what are the appropriate terms, conditions, and pricing of the credit enhancements?

    Private mortgage insurance is exceedingly rare for chattel lending. The FHA program incorporates a government-provided mortgage insurance component that is passed along to the consumer. If private mortgage insurance cannot be readily available, then a government-provided options may be needed. Additionally, some measure of lender-provided enhancement may be appropriate.

14. In designing chattel loans pilots, how might the Enterprises incorporate lender recourse or sharing credit risk with private investors?

    Lender recourse that is scoped to a reasonable time and loan balance limit – e.g., 3 years, 10% equity, etc. – may be achievable.

Chattel Loan Servicing

15. Describe the current practices for chattel loan loss mitigation, including any roles played by manufactured housing communities and any regional variations in mitigation practices.

    Lender offer several loss mitigation options for chattel loans – loan modifications, payment extensions, homeowner assistance programs, etc.

16. What efforts at chattel loan loss mitigation (e.g., short sale, deed-in-lieu, and modification) should be required in a chattel loans pilot?

    Clayton does not have a strong preference for the types of loss mitigation options that are made available under the GSE guidelines – note though, that additional options impose additional costs that are a larger percentage of the smaller balance chattel loans. Servicing fees would need to be adjusted to account for this.

17. What are the current practices for disposition of repossessed chattel-financed homes?

    Repossessed chattel-financed homes are sold through retailers, wholesale purchasers and communities as well as directly to consumers.