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Federal Housing Finance Agency
Eighth Floor
400 7th Street SW.
Washington, DC 20219

Electronic Submission: www.FHFA.gov/DTS

Re: Comments on Proposed Underserved Markets Plan On Behalf of Our Client
Manufactured Housing Communities of Arizona (MHCA)

Ladies and Gentlemen:

FHFA has asked for public input on proposals submitted by Fannie Mae and Freddie Mac (the Enterprises).

Manufactured Housing Communities of Arizona (MHCA) is an Arizona association composed and representing the interests of operators of mobile home parks and manufactured home communities statewide. It has previously submitted comments on related subjects concerning FHFA Duty to Serve proposals.

FHFA now requests input from interested parties on underserved markets plans submitted by the Enterprises. The comments set forth below will address the proposals of each Enterprise separately.

In reviewing the following comments, the reader will see emphasis being placed on landlord policies and documentation in implementing pilot proposals. MHCA strongly believes that limiting chattel lending to rental communities meeting reasonable Enterprise criteria will provide better protection of the value of the collateral than in other communities.

While at first sight one may wonder why a rental community's activities may have a profound impact on the program, it is important to remember that chattel financing is often criticized since manufactured homes sit on leased land. The resulting consequence is almost always considered to be a resulting rapid deterioration in the value of the manufactured homes increasing in the riskiness of making loans collateralized by them.

Appraisers of manufactured homes generally recognize the connection between the value of the manufactured home and the operation and maintenance of the rental community in which

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they are located. The same home in a well-operated, and well-maintained rental community in which tenants are carefully screened to ensure that only credit-worthy applicants with no history of home maintenance issues will appraise much higher than the same home in a poorly operated community with a lax attitude towards screening to ensure quality of tenants.

Enterprise pilots need to include requirements to be met by rental community landlords in the following areas:

1. Applicant screening criteria. Consideration needs to be given to landlord requirements and policies on applicant criminal backgrounds, credit ratings, litigation history, past eviction histories, and comments by former landlords related to conduct and home maintenance issues. Communities with lax or no requirements are likely to be more poorly maintained than those enforcing reasonable and effective requirements.

2. Rental agreement provisions. These need to obligate tenants to maintain their homes and rental spaces in accordance with community rules and regulations imposing high level maintenance requirements.

3. Community rules and regulations. These need to require tenants to maintain their homes and rental spaces in accord with reasonable detailed standards having the effect of keeping them at a high level of maintenance and repair.

4. Landlord enforcement of community maintenance and repair policies. The appearance of the community must be evaluated and achieve a certain level of effectiveness before chattel lending should be approved for homes located in them. Notwithstanding a high quality of rental documentation, if the appearance of the community is that homes are not being maintained, then the value of all homes—not just the run-down ones—will deteriorate, and there will be a decline in value of all of them.

In addition, before a community is considered eligible for chattel financing of tenant homes located in it, the legal protections afforded both tenants and secured creditors on their homes should be considered. States selected as pilot program locations will hopefully have effective laws providing reasonable protections for tenants and effective procedures for recognizing, perfecting and enforcing lender security interests. Typically these protections will be recognized in community rental documentation.

Either landlord tenant laws or the individual tenant rental agreements need to provide fairly long-term rental terms, with the tenancy subject to early termination only for legal good cause. The law, the rental agreement, or both need to provide adequate protection for the rights of secured creditors in the event of early termination of the tenancy or abandonment of the home in the community by the tenant.

See below for more detailed discussion of those topics and brief explanations of how they are reflected in Arizona law.

The typical landlord is not especially concerned over protection the rights of secured creditors on tenant homes. Depending on the state's chattel security laws, lien registration

procedures, and foreclosure (replevin) procedures, and on landlord tenant laws bearing on secured creditor rights and liabilities following repossession of homes or eviction/abandonment situations, Enterprises may need to ask landlords to provide additional lender protections in rental documentation, once again to protect the value of the collateral.

The FHFA previously reviewed certain criteria under which Duty to Serve credit for Enterprise support of chattel lending could be considered. In particular, tenant protections as described in “Manufactured Housing Communities with Tenant Protections—Proposed § 1282.33(c)(2)(iii)” were reviewed.

There were five elements proposed at that time by the FHFA as tenant protections. We suggest that any Enterprise pilot program take into account most of those protections in choosing a location for the program and developing the substantive contents.

1. Minimum one-year renewable lease term unless there is good cause for nonrenewal.

Chattel loan security is heavily dependent on that assurance that the home securing the loan will remain in place for a long term. The requirement of a one-year renewable lease requiring good cause not to renew is a minimum necessity for this purpose. Otherwise tenants/borrowers will face the prospect of being terminated well before the loan can be paid off.

In our environment, Arizona law now gives tenants the right to demand a one-year lease, which the landlord must honor. In addition, the law also gives tenants the right to demand a four-year lease if they can come to agreement on the rental amounts during that term. Arizona law permits indefinite renewal of leases for tenants unless the landlord has narrowly defined good cause to non-renew (the same as for terminations). So Arizona, for example would be an ideal location under this criteria.

2. Minimum thirty-day written notice of rent increases.

Rent increases can make the total rent/home payment so expensive that tenants/borrowers able to afford the combined payment can no longer afford it. In addition to advance notice restricting the amount of a rent increase at any time will enhance lender security.

Arizona Law requires landlords to give a minimum 90-day notice of rent increases and they can only be effective at the expiration/renewal of the rental agreement. Arizona law does not limit the amount of a rental increase but does require that if it exceeds 10% plus the preceding year’s CPI increase the landlord must give a special notice advising tenants they may move at the expense of a state administered relocation fund. While not a direct rent increase limitation this does tend to discourage large rent increases since landlords would prefer not having their tenants move out.

3. Minimum five-day grace period for rent payments, and right to cure defaults on rent payments.

This is important to guard against lease terminations for inadvertent delays in paying rent. Arizona law now gives tenants a minimum seven-day grace period for rent payments, and the

right to cure defaults on rent payments at any time thereafter until a court judgment of eviction is entered.

4. *If a tenant defaults on rent payments, the tenant has the right to: Sell the manufactured home without having to first relocate it out of the community; sublease or assign the pad lease for the unexpired term to the new buyer of the tenant's manufactured home without any unreasonable restraint; post 'For Sale' signs; and have a reasonable time period after eviction to sell the manufactured home.*

There are instances where despite best efforts the tenant/buyer must dispose of the home before the loan has been repaid. The ability to sell or otherwise dispose of a unit to a buyer who will pay off or assume responsibility for the loan is an important protection for the secured lender.

In Arizona the law allows a tenant to sell a home without having to first relocate it out of the community so long as it remains in the tenant's name even after eviction. That generally gives the tenant no less than 60 days after any eviction to get the home sold. The law requires the landlord to approve the buyer of the home as a new tenant unless there is a reasonable basis to reject the buyer's application.

Arizona law gives tenants the right to post up to a 12" X 18" for sale or open house sign on their homes at all times.

Even in the case of the death of the tenant the law allows the tenant's estate to either assume responsibility for the home or to sell it on site to a landlord approved buyer

5. *Right for tenants to receive at least 120 days advance notice of a planned sale or closure of the community, within which time the tenants, or an organization acting on behalf of a group of tenants, may match any bona fide offer for sale. The community owner shall consider the tenants' offer and negotiate with them in good faith.*

Arizona law now requires not less than 180 days' notice before a rental community can be closed. There is no requirement to permit a tenant organization to match a purchase offer though there are provisions allowing the formation of tenant organizations for the purpose of trying to purchase communities, and requiring landlords to state what their policy is about allowing tenants a right of first refusal to buy the community.

Historically community operators in Arizona have opposed a first refusal requirement since it would severely hurt their ability to sell communities--prospective buyers would be hesitant to do all the work that goes into making an offer just to have someone else jump in and match it. We do not believe that is in the best interests of the manufactured housing industry or, for that matter the GSE entities acquiring loans against them since the first refusal right would negatively affect the values of the communities themselves.

When a manufactured housing community sells, the buyer assumes the responsibilities of the seller as landlord. When a park is to be closed and the 180-day closure notice goes out, Arizona law permits tenants to relocate their homes elsewhere at the expense of a state

administered relocation fund. The former requirement affords security to lenders; the latter at least helps ensure the home will not be lost either to a distress sale or abandoned. While it may not be sold on site in a community about to be closed, at least it can be relocated at state expense to a comparable location elsewhere.

In all cases where a home subject to a lien is abandoned, the law in Arizona requires the landlord to send a notice of abandonment to the lienholder.

Miscellaneous Considerations

It is important that borrower and tenant protections either be embedded in the law of any pilot program state, or absent that that minimal protections not included in the law itself be provided under contract with the landlord of the community where the home is located.

Most of the above discussed buyer protections are provided in Arizona law for example, by a combination of statutory requirements on landlords (e.g., duty to enforce community rules and regulations and to maintain community facilities) and enforcement mechanisms (e.g., existence of dedicated administrative law judge procedure for tenants to quickly and inexpensively have complaints against landlords adjudicated). If additional protections are deemed necessary, landlords need to be willing to explore adding them into the rental documentation.

Enterprises should also be aware of direct lender protections in the pilot state's laws. For example, Arizona law requires a landlord to give notice to the lienholder if a home is abandoned in a rental community. It contains specific procedures under which lienholders can remove a home from a community and detailed information on what a lienholder can be held liable for by a landlord. It requires tenants to notify landlords of lienholder changes in status within ten days so the landlord can contact them. And it outlines the responsibilities of lienholders toward landlords when a foreclosed home is about to be removed from the premises.

Fannie Mae Proposal

Fannie Mae's proposal for chattel loans appears at pages 35-38 of its proposed plan. Section B covers chattel loan provisions.

B. Regulatory Activity: Chattel loans on manufactured homes titled as personal property (12 C.F.R. § 1282.33 (c) (2)).

1. **Objective #1:** Conduct outreach and market research through engagements with lenders and cross-functional industry representatives to support development of a chattel loan pilot (Analyze, Partner and Innovate).

Part of the analysis of any chattel lending proposal needs to consider how the loans are placed under relevant state law and what protections can be built into lending documents recognizing that the manufactured homes securing them are located in space rental manufactured housing communities. Documentation for the perfection of lender security interests needs to be

created on a state-by-state basis and requirements for manufactured housing communities concerning lease protections for secured parties need to be developed.

Landlord requirements for qualifying residents for tenancy need to be reviewed to ensure that they act as an effective deterrent to financially unqualified tenants being approved. This will act as a stopgap to lender qualification requirements and provide additional security.

One of the major sources of the necessary research needs to be community landlords and manufactured home retailers for sale, securitization and rental documentation information.

The SMART factors listed by Fannie Mae appear adequate. However, MHCA believes that three years is excessive to develop such data.

2. Objective #2: Acquire chattel data from multiple sources to inform development of a chattel pilot, aggregate information acquired, and distribute findings (Analyze).

MHCA believes the proposal is realistic with regard to the necessary information and means of gathering it as outlined in it. Once again, however, three years appears to be an excessive amount of time to accomplish this.

3. Objective #3: Establish a chattel loan pilot by securing approval from FHFA to place chattel loans in our portfolio, putting underwriting policies and credit standards in place to acquire chattel loans in a safe and sound manner, purchasing chattel loans, and developing securitization structures to attract private capital (Do What We Do Best).

Once again MHCA views the three-year period of this proposal as excessive.

This is the key to accomplishing Objectives 1 and 2. A pilot program should take place in one or two states with chattel security laws, manufactured home titling and lien perfection laws and landlord tenant laws representative of those in a majority of states. It makes little sense to have a pilot in a state with unusual titling, security and landlord tenant laws that are unique to that state. The state(s) chosen should also have a strong state organization of manufactured housing community operators willing to support Fannie Mae's efforts.

One largely overlooked component in the analysis of chattel lending needs to be on the manufactured housing community landlord tenant laws and the protections they have for chattel lenders. Another focus should be on additional protections for secured lenders that can be created by agreements between lenders and landlords.

MHCA strongly believes that a pilot should involve all aspects that will eventually be involved in a chattel lending program including use of a local chattel lender or lenders in a manner similar to DUS lenders in multifamily loans. This includes borrower qualification criteria for each risk level of loan; time requirements to close the loan after submission of the borrower's application; loan paperwork tailored to the state where the loan is made; evaluation of landlord tenant law in that state and protections afforded lenders; and additional requirements for landlords in order to qualify their communities as sites for chattel loans.

Freddie Mac Proposal

Freddie Mac's proposal for chattel loans appears at pages 23-24 of its proposed plan. It says that based on that it will develop the capability for a chattel loan pilot. It proposes to launch the pilot in year two of the plan. It also says "[t]he scope of the pilot could include purchasing an existing portfolio of loans."

MHCA believes this would be a mistake. If Freddie Mac is serious about getting into the chattel lending business, its pilot should be a cradle to grave operation, along the lines outlined in our comments on the Fannie Mae proposal above.

Freddie Mac states that there is currently a limited secondary market for chattel loans. It believes the results of a pilot program will have a significant impact on manufactured housing titled as personal property because the pilot can assist in the development of a more robust secondary market. The success of the pilot program—even if it does not result in a significant volume of loans purchased—will be in the form of lessons learned. These lessons will be invaluable as they continue to create solutions to increase liquidity in this market.

MHCA agrees with this observation provided the pilot is conducted in a state representative of others in the areas outlined above. But if there is only a tiny loan volume, the significance of the program is exaggerated. An insignificant loan volume pilot program will have an insignificant effect on chattel lending in general. This is all the more the case if Freddie Mac's program is primarily involved with acquiring another lender's chattel loan portfolio. That will have no effect, not a "significant effect."

Page 21 states "Freddie Mac does not currently purchase loans for manufactured housing titled as personal property. We do not have the requisite systems in place to purchase chattel, nor do we have historical data on chattel loan performance that would allow us to make determinations about whether the purchases of these loans can be made in a safe and sound manner . . . Considering our lack of experience with chattel loans and being mindful of safety and soundness concerns, Freddie Mac intends to take a systematic and incremental approach to review before entering the chattel market (*emphasis added*)."

This admitted lack of experience in chattel lending makes it clear that a good pilot program in a representative state with a strong manufactured housing industry association, and with landlords and lenders willing to help, is essential for Freddie Mac to overcome these deficiencies. And a good pilot program must go far beyond simply buying someone else's chattel loan inventory.

Conclusion

Fannie Mae is obviously further down the road in its analysis of this subject and its pilot program proposal makes a lot of sense. It should be tightened up in terms of time needed and more comprehensive in the things to be analyzed including loan and landlord documentation. But it is a good start.

Freddie Mac by its own admission has little knowledge in this area and its proposal acknowledges that. It should take a close look at the Fannie Mae proposal and duplicate much of its contents. Once again a cradle to grave hands on pilot program actually making and documenting loans is vital as opposed to just buying someone else's inventory.

MHCA and the Arizona manufactured housing industry is interested in hosting a pilot program. Arizona and its landlord industry is representative of most states in terms of relevant laws and landlord practices. The industry leaders in Arizona are anxious to assist and cooperate in a pilot program instituted by either Enterprise.

Sincerely,



Michael A. Parham