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

July 10, 2017

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

Hon. Melvin Watt
Director
Federal Housing Finance Agency
Eighth Floor
400 7th Street, S.W.
Washington, D.C. 20219

Re: Duty to Serve Underserved Markets – Implementation Plan Evaluation

Dear Director Watt:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a national trade association representing the views and interests of 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 (42 U.S.C. 5401, et seq.) as amended by the Manufactured Housing Improvement Act of 2000 (2000 reform law). MHARR was founded in 1985. Its members include independent manufactured housing producers from all regions of the United States.

I. INTRODUCTION AND PROCEDURAL HISTORY

On December 29, 2016, the Federal Housing Finance Agency (FHFA) published a final rule in the Federal Register to implement the "Duty to Serve Underserved Markets" (DTS) provision of the Housing and Economic Recovery Act of 2008 (HERA) (DTS Final Rule). [1] FHFA adoption of the DTS Final Rule followed publication of proposed DTS implementation rules on December 18, 2015 (2015 Proposed Rule)[2] and June 7, 2010 (2010 Proposed Rule).[3] MHARR's March 15, 2016 written comments on the DTS 2015 Proposed Rule and its July 1, 2010 comments

[1] See, 81 Federal Register, No. 250 at p. 96242, et seq.
[2] See, 80 Federal Register, No. 243 at p. 79182, et seq.
[3] See, 75 Federal Register, No. 108 at p. 32099, et seq.

regarding the DTS 2010 Proposed Rule are hereby incorporated by reference in this document as if re-stated herein in full.

Pursuant to the 2016 DTS Final Rule, FHFA established a process and timeline for, among other things: (1) the submission of proposed DTS implementation plans by the Government Sponsored Enterprises (Enterprises), Fannie Mae and Freddie Mac; (2) the submission, receipt and consideration of public comment on those plans; (3) the evaluation of those plans by FHFA as the Enterprises' federal regulator and conservator pursuant to Evaluation Guidance (as amended) published by FHFA on January 13, 2017; and (4) the approval, rejection, or modification of those plans by FHFA.

In accordance with this procedure, the two Enterprises published proposed DTS implementation plans for public comment and ultimate consideration by FHFA on May 8, 2017. MHARR, having analyzed those plans, both in the context of the express directives and clear legislative purposes of the DTS mandate, as well as the duties and obligations imposed on FHFA pursuant to other legislation and its conservatorship of the Enterprises, for the reasons set forth below, finds those plans to be wholly deficient and unacceptable with respect to the manufactured housing component of DTS – and particularly the chattel financing segment of the manufactured housing consumer lending market – and therefore opposes those plans as currently constituted. Instead, MHARR calls on the Enterprises and FHFA – as it has consistently since Congress' adoption of DTS in 2008 – to produce and approve amended plans that would provide for the market-significant securitization and secondary market support of manufactured home chattel loans by the Enterprises on an expedited basis.

While MHARR recognizes the need for due diligence by both FHFA and the Enterprises in evaluating the potential risks and benefits posed by participation in the manufactured housing chattel financing market (as communicated to it both directly and indirectly by FHFA officials) the fact remains that: (1) FHFA and the Enterprises have had nine years since the enactment of HERA and DTS to gather and analyze relevant data (or conduct one or more pilot programs), but have failed to do so to date; (2) data -- as well as an established market track record -- already exist demonstrating the performance and profitability of manufactured home chattel loans; and (3) credit-worthy American consumers of affordable housing, in the absence of Enterprise securitization and secondary market support for manufactured home chattel loans, continue to be either needlessly excluded altogether from the American Dream of homeownership due to the absence of available lower-interest financing, or needlessly subjected to higher-cost interest rates within a less-than-fully-competitive market by the few existing market-dominant lenders which have the ability and resources to retain such loans in portfolio.

Just as – if not more – importantly, FHFA and the Enterprises have consistently refused to recognize and acknowledge in this proceeding, that with DTS, Congress established an unequivocal policy directing the Enterprises (and FHFA) to remedy their past failure to serve the manufactured housing market, in a way that is prudent, but, of necessity, ameliorates the harsh and discriminatory restrictions – imposed under other more general statutes and policies – used by the Enterprises for decades as an excuse for their near-total failure to provide securitization and secondary market support for the manufactured housing market. It was that failure which led Congress to specifically identify manufactured housing within DTS/HERA as a historically

"underserved" market. Moreover, it was that failure – and the necessity of ameliorating those restrictions on serving the manufactured housing market -- which led Congress to specifically direct the GSEs and FHFA to "develop loan products" with "flexible underwriting guidelines," to facilitate a secondary market for manufactured housing loans.

Without significantly ameliorating, conditioning and modifying those restrictions, as expected and directed by Congress, the Enterprises and FHFA will never accomplish the goals and objectives of DTS with respect to manufactured housing by materially advancing the availability of manufactured housing as a prime affordable, non-subsidized housing resource for American families. Yet, neither the 2016 Final Rule published by FHFA – or the DTS implementation plans submitted by the Enterprises – reflect any specific amelioration of those discriminatory restrictions whatsoever, and instead presume the continuing applicability of those restrictions to propose endless rounds of "outreach," "engagement," "communication feedback loops," "conferences," "roundtables," "discussions," and other data collection, research and analysis, all for the ostensible purpose of complying with those restrictions, before seeking FHFA approval to purchase even one manufactured housing chattel loan.[4] This continuing adherence to discriminatory restrictions that Congress clearly sought to override and supersede through DTS is a clear prescription for either no progress whatsoever for manufactured homebuyers – or insignificant "progress" at a glacial pace – that makes a mockery of DTS and Congress.

Indeed, given the Enterprises' history of staunch resistance – and outright hostility – to serving the manufactured housing market and to designing, structuring and establishing securitization and secondary market support programs for manufactured housing and the mostly lower and-moderate-income American families that it serves, FHFA leadership on DTS is all the more critical. For three decades the Enterprises have paid lip service to the industry and its consumers, while attending meetings and conferences, visiting factories and other industry facilities, and empaneling task forces and outreach groups, but never with any concrete results. Now, though, with a clear congressional edict to compel the Enterprises to properly serve this market and credit-worthy consumers who fall squarely within their statutory and charter mission to promote homeownership, FHFA has provided the Enterprises with the discretion and maneuvering room that they need to continue paying lip service to the manufactured housing market without accomplishing anything of substance. The FHFA 2016 DTS Final Rule and the proposed DTS implementation plans flowing from that rule, represent not only a failure to comply with the will and word of Congress, but a failure of leadership as well.

MHARR, accordingly, as set forth below – and as otherwise detailed in its prior DTS comments incorporated herein by reference – opposes the proposed DTS plans as manifestly inadequate to comply with and fulfill the term and objectives of the DTS mandate.

---

[4] Fannie Mae's proposed DTS Implementation Plan does refer to "revis[ing], one or more terms (i.e., create a variance) for Fannie Mae manufactured housing loan products to facilitate purchase," explaining that "a variance is one tool that Fannie Mae will use to provide loan products to and flexible underwriting guidelines for the underserved markets." See, Fannie Mae proposed DTS Implementation Plan (May 8, 2017) at p. 30. The plan, however, does not identify the substance of any such variance(s) and, more importantly, only refers to such variances in its discussion of manufactured housing real estate loans. No similar variances or modifications are addressed with respect to manufactured housing chattel loans.

I. BACKGROUND

FHFA's fatally deficient 2016 DTS Final Rule – as MHARR anticipated and predicted at the time – has ensured the submission of equally flawed DTS implementation plans by the Enterprises.

DTS, as MHARR has frequently stressed, is manifestly remedial legislation designed to correct and reverse the Enterprises long-standing failure and/or refusal to serve the manufactured housing market and the other statutorily-identified markets. As such, established canons of statutory construction and judicial precedents hold that it is to be construed in a "broad and liberal" manner in order to achieve its legislative purposes. But that is not – and has not -- been the case with DTS through the entire FHFA administrative proceeding, including both the 2010 and 2015 proposed rules, the 2016 Final Rule, and now the DTS implementation plans proposed by the Enterprises.

As a remedial statute with a mandatory directive, DTS is not a congressional invitation for stasis, for maintaining the fundamental *status quo* for one or more decades, or indefinitely. It is instead, a mandatory directive to change and correct the *status quo ante* in a material fashion and in a timely way 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 legislated, must end.

Judged against this benchmark, FHFA failed when it promulgated its permissive 2016 Final Rule, which does not require specific securitization or secondary market support by the Enterprises for manufactured housing loans in general – and manufactured housing chattel loans in particular. That rule – which failed itself to comport with the specific congressional goals and objectives of DTS – effectively guaranteed that the ensuing DTS implementation plans produced pursuant to that rule would fail to provide any market-significant or meaningful support for such loans during their three-year coverage period.

First and most significantly, as MHARR emphasized in its March 15, 2016 DTS written comments, consumers in need of immediate access to affordable housing[5] 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[6] -- have effectively been denied a DTS remedy of any kind for nearly a decade already. Over that time, no specific, quantifiable progress has been made – at all – in meeting Congress' directive. As is shown by the 2016 Final Rule, by FHFA's January 13, 2017 Evaluation Guidance document and by FHFA's subsequent Request for Information (RFI), information that could have been solicited and/or

[5] According to the 2015 HUD "Worst Case Housing Needs" report to Congress, some 7,720,000 American households suffered "worst-case" housing needs, defined as very low-income renters, not receiving government housing assistance, who paid more than half of their income for rent, lived in "severely inadequate conditions," or both.

[6] See, e.g., Section 602 of the Manufactured Housing Improvement Act of 2000: "Congress finds that – (1) manufactured housing plays a vital role in meeting the housing needs of the nation; and (2) manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans." (42 U.S.C. 5401(a).

developed years ago, is just being sought now, with years more of delays slated to follow, before any concrete relief for consumers, if any, will even be possible.[7]

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 permissive, but rather an adjunct and clarification of the mandatory "duty" established by DTS.

The implementation of DTS, however, established by the FHFA final rule and related 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. This permissive formulation fundamentally fails the directive of Congress, as do the Enterprises' DTS implementation plans produced pursuant to that rule and guidance. 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 2016 Final Rule and Evaluation Guidance – and now the DTS implementation plans produced pursuant to those documents -- 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

[7] 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, such as 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, remedial, market-significant results for years to come.

housing market represented by such chattel placements (according to U.S. Census Bureau data),[8] 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 2014 – a 25% increase.

Very simply, a DTS implementation rule – and proposed implementation plans -- that 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 FHFA Final Rule -- as MHARR noted in calling for its withdrawal and substantial modification – and, now the DTS implementation plans produced pursuant to that rule, thus represent a continuation of the unacceptable situation that Congress sought to remedy via DTS. 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 homeownership 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. Meanwhile, the while the single most affordable source of home ownership – manufactured housing[9] – is subject to continuing financing discrimination under the final rule adopted by FHFA and the Enterprises' DTS implementation plans.

---

[8] See, U.S. Census Bureau, Cost and Size Comparison: New Manufactured Homes and Single-Family Site-Built Homes (2007-2014).

[9] See, U.S. Department of Housing and Urban Development, "Is Manufactured Housing a Good Alternative for Low-Income Families? Evidence from the American Housing Survey" (December 2004).

II. COMMENTS

1. A Fatally-Deficient FHFA DTS Final Rule has Yielded Grossly Inadequate and Unacceptable Enterprise DTS Implementation Plans

The May 8, 2017 DTS implementation plans submitted by the Enterprises pursuant to the entirely discretionary 2016 DTS Final Rule and related FHFA Evaluation Guidance (both of which were opposed by MHARR as being totally inconsistent with the mandatory and remedial nature of DTS as enacted by Congress) predictably fail to make any commitment whatsoever to market-significant ongoing purchases of the chattel loans which comprise the vast majority of the manufactured housing consumer financing market.

In a *de facto* attempt to nullify Congress' DTS directive to both Enterprises to finally serve the manufactured housing market, after refusing -- for decades -- to provide any securitization or secondary market support for chattel loans and only negligible support for manufactured home real estate loans, the Enterprises' proposed DTS implementation plans would leave in place, for the foreseeable future (and, potentially, forever), longstanding policies that harshly discriminate against the lower and moderate-income Americans who rely the most on affordable manufactured housing -- unnecessarily forcing those same consumers into higher-cost loans offered by industry-dominant lenders, or excluding them altogether from the manufactured housing market and the American Dream of homeownership.

As MHARR stressed soon after the publication of the 2016 DTS Final Rule: "If Congress had meant the "duty to serve" to be optional, it would not have called it a "duty." The dictionary definition of a "duty" has – at its core – a *mandatory* responsibility. And Congress is presumed to use words according to their ordinary and customary meaning. But nothing in the FHFA rule would *require* Fannie Mae or Freddie Mac to do *anything* to support MH chattel loans. So the "duty" instituted by FHFA in the 2016 Final Rule and its subsequent DTS implementation plan Evaluation Guidance, is not really a "duty" at all, but more of a choice left to entities that have steadfastly refused to provide secondary market support for MH chattel loans – which prompted the "*duty* to serve" in the first place."

Not surprisingly, given the discretionary, non-mandatory nature of the 2016 DTS Final Rule and FHFA Evaluation Guidance, which offered multiple paths to avoid any type of securitization or secondary market support for manufactured housing chattel loans, and the Enterprises' habitual, deep-seated antipathy toward manufactured housing loans and manufactured homebuyers, neither Fannie Mae nor Freddie Mac, in their implementation plans, propose even a modest program of on-going, market significant manufactured home chattel loan support. Instead, nearly a decade after the enactment of the DTS mandate – to provide timely and material relief for historically underserved consumers in the manufactured housing market -- the proposed plans are a study in obfuscation and needless delay which make a mockery of both the letter and intent of DTS as enacted by Congress and would allow the current one or two market-dominant lenders to continue charging manufactured homebuyers higher-cost interest rates.

After having had the opportunity – for nearly ten years after the enactment of DTS – to seek, obtain and analyze chattel-relevant information; having published and received extensive public comment on two proposed DTS implementation rules – in 2010 and 2015; after meetings with industry and other stakeholders in 2016; after three DTS "listening sessions" in 2017; after an April 26, 2017 meeting with industry stakeholders at FHFA; after receiving public comments in response to FHFA's January 2017 "Request for Input" (RFI) specifically addressing manufactured home chattel lending; after many other undocumented meetings with stakeholders, visits to industry gatherings, forums and trade shows; and knowing that current "portfolio" manufactured housing lenders have developed a profitable business model (with higher-cost interest rates that would produce even greater returns with the lower rates and significantly greater volume that would result from Enterprise support), both Fannie Mae and Freddie Mac still claim, in their respective proposed plans, that they need to acquire and study additional "information" regarding chattel loans before they can establish any type of even limited support for manufactured home chattel loans. This ten-year charade will unfortunately conclude to the profound detriment of consumers – and especially credit-worthy but lower-income families, unless significant changes are made to the proposed plans.

2. Neither of the Proposed DTS Plans Make DTS-Compliant Provisions for the Securitization or Secondary Market Support of Manufactured Home Chattel Loans

A. Freddie Mac

Freddie Mac's proposed DTS Implementation Plan, for example, makes no specific commitment whatsoever to the purchase of any quantity of manufactured home chattel loans during the entire three-year period covered, or even to the establishment and implementation of a specific chattel loan "pilot program." The Fannie Mae plan, instead, states: "We expect that we will have garnered sufficient information by year two to develop guidelines for a chattel pilot. *** We intend to continue our research and outreach in year three...." (Emphasis added). The plan then indicates that Freddie Mac will "initiate a pilot for chattel," potentially in the third and final year of its plan – "subject to receipt of FHFA approval," but offers no volume parameters for such a program. Likely foreshadowing a severely limited pilot program, even at that point, moreover, Freddie Mac states: "The success of a pilot program – even if it does not result in a significant number of loans purchased – will be in the form of lessons learned." (Emphasis added).[10]

Instead of providing actual securitization and secondary market support for manufactured home chattel loans, the Freddie Mac DTS Implementation Plan seeks DTS credit for activities in the chattel arena: (1) to "promote a greater understanding of the market through research;" (2) to "develop a chattel pilot offering" (subject to FHFA approval); and (3) to develop homebuyer education in support of chattel financing."[11] None of these activities, however, would provide one iota of actual market support for manufactured housing chattel loans or the 80% of manufactured homebuyers who rely on those chattel loans, leaving those consumers, for the indefinite future, locked in a less-than-fully-competitive manufactured housing finance market, needlessly paying

[10] See, Freddie Mac DTS Implementation Plan (May 8, 2017) at p. 23.

[11] Id. at p.10.

higher-cost interest rates to industry dominant lenders that have paid lip service to DTS while failing to take specific actions to advance its full and complete implementation.

Based on the failure of Freddie Mac's proposed Implementation Plan to provide for specific, market-significant securitization and secondary market support for manufactured housing loans on an expedited, going basis, that plan fails to comply with DTS and is, therefore, unacceptable.

B. Fannie Mae

Fannie Mae similarly falls back on the alleged need to "acquire industry chattel data and information essential to the development of a chattel pilot." Unlike Freddie Mac, though, it does propose to pursue "internal" and FHFA "approval" for actual chattel loan purchases under a pilot program during year two and three of its DTS implementation plan. However, even assuming that such approvals are actually sought – and actually obtained, which is not a given – the manufactured housing chattel loan "pilot program" envisioned by Fannie Mae would be extremely limited and not market-significant, involving potential "purchases" of "between 350 and 425 chattel loans per year (about $20 to $25 million)...." (Emphasis added).[12]

To place these numbers in perspective, such purchases would amount to providing support for 0.43% to 0.52% of the 81,136 HUD Code manufactured homes produced during 2016. For the approximately 80% of new manufactured homes produced in 2016 placed as chattel (i.e., 64,909 homes), the comparable figures would be 0.53% to 0.65%. Even these miniscule percentages, though, would fall with somewhat higher production levels anticipated in 2017 and subsequent years.

To place these numbers in further perspective, proposed manufactured home chattel loan purchases of $25 million per year (beginning in 2018), would amount to 0.009% of Fannie Mae's current mortgage portfolio (i.e., $255,721,000, 000) as of May 31, 2017, and 0.0007% of Fannie Mae's total book of business (i.e., $3,167,805,000,000) as of the same date.[13]And, again, even these paltry percentages will fall still lower by the time that any such program is actually implemented, as the pace of Fannie Mae's site-built housing business will far outstrip such token manufactured housing purchases.

Based on the failure of Fannie Mae's proposed Implementation Plan to provide for specific, market-significant securitization and secondary market support for manufactured housing loans on an expedited, going basis, that plan similarly fails to comply with DTS and is, therefore, unacceptable.

Moreover, while, then, both Freddie Mac and Fannie Mae bemoan the "limited availability of data"[14]concerning manufactured home consumer lending and pay endless homage to the need for what amount to guarantees of "safety" and "soundness" in entering a field that would expand

[12] See, Fannie Mae DTS Implementation Plan (May 8, 2017) at pp. 37-38.

[13] See, Fannie Mae, "Monthly Summary Highlights – May 2017."

[14] See, e.g., Fannie Mae Proposed DTS Implementation Plan (May 8, 2017) at p. 37.

the availability of affordable, non-subsidized homeownership for millions of credit-worthy moderate and lower-income Americans, they (and FHFA) ignore two essential points.

First, there is no "policy" decision for either the GSEs or FHFA to make. Congress, through DTS, made that policy decision for them – i.e., the Enterprises have a mandatory duty to provide a remedy for consumers they have previously underserved within the manufactured housing market, to provide "new"[15] products for the securitization of such loans, with "flexible" underwriting guidelines, and creation of a secondary market for such loans in a way that will remedy the failure to adequately serve that market, as identified by Congress. Thus, contrary to FHFA's 2016 DTS Final Rule, the "duty" to serve all segments of the manufactured housing market is, in fact, mandatory and not discretionary, and any failure to establish such "new" products as directed by Congress represents a violation of DTS/HERA.

Moreover, despite continuing efforts by the Enterprises to disparage manufactured housing loans and manufactured housing borrowers, manufactured housing played no part whatsoever in the 2008 credit crisis that ultimately led to the Enterprises' conservatorship. For years prior to the failure of the Enterprises, manufactured housing obligations constituted a miniscule portion of the Enterprises' total business. The performance of manufactured housing loans -- at less than one percent of the Enterprises' portfolios -- was not responsible for the Enterprises' failure, was not a significant factor in their failure and, because of the relatively small size of the manufactured housing market as compared with other segments of the housing industry, would not impair the successful rehabilitation of the Enterprises (or the future transfer of their functions) even if the Enterprises purchased or guaranteed every manufactured home loan for the indefinite future.

The failure of the Enterprises in 2008 was a consequence of their massive participation in the extremely risky and exponentially larger sub-prime finance market for site-built homes and other risky real estate mortgage products, including adjustable-rate mortgages, low or no-down-payment loans and interest-only loans, among others. For the Enterprises, which built their business around that market for years, ignoring its inherent risks and providing market support for well-heeled borrowers, while deriving tax and other government benefits for supposedly serving low, lower and moderate-income borrowers, to now claim (or for FHFA to claim) that they would somehow be harmed by the performance of a comparatively small number of lower-cost manufactured housing chattel loans, is disingenuous and destructive of the true function and mission of the Enterprises.

Put differently, for the Enterprises, that spent years putting people into homes they could not afford -- leading to their own collapse -- to now balk at helping people buy manufactured homes that they can afford, based on alleged "risk," is absurd, unacceptable and inexcusable. Manufactured home loans -- of all types -- which pair purchasers with modern (i.e., post-2000 reform law) manufactured homes that they can afford, rather than employing gimmicks to paper

[15] Despite Congress' directive to the GSEs to develop "new" loan products for manufactured housing, Fannie Mae, in its May 8, 2017 Proposed DTS Implementation Plan, seeks to resurrect its decidedly not-new "MH Select" program. Rolled-out to great fanfare in 2008, MH Select was a resounding failure, generating virtually no activity while it mandated features and amenities for manufactured homes sited and financed as real estate which undermined their fundamental affordability.

over insufficient resources, when managed properly, are no more risky than any other home loan and are far less risky than the loans which landed the Enterprises in conservatorship. As the "Application of the Duty to Serve Underserved Markets" White Paper included with MHARR's 2010 NPRM comments emphasizes, these products, including real estate, land-home and chattel transactions, represent "successful lending models that [have] served the industry well and produced profitability for the lenders." Consequently, if serving the manufactured housing market as Congress intended requires the Enterprises to develop new "operational capacities" and "risk management processes not currently in place," then those capacities should be developed and put in place, instead of emasculating DTS.

Indeed, the continuing overt hostility of FHFA and the Enterprises toward manufactured home chattel loans – and the lower to moderate-income home buyers who rely on those loans in particular – stands in sharp contrast with FHFA's rush in late-2014 to significantly relax underwriting standards for Enterprise-supported loans in the site-built sector. As part of those revised standards, first-time home owners became eligible for Enterprise-supported home loans with down-payments as low as 3% and FICO scores as low as 620 (at Fannie Mae).[16] Thus, while the Enterprises (encouraged and authorized by FHFA) have lost no time in reverting to the type of risky practices that led to their insolvency and conservatorship in the first place – for the benefit of wealthier, credit-laden purchasers of much more costly site-built homes (with an average sales price of $345,800 in 2014),[17] FHFA still, at best, would severely restrict and constrain any DTS support for 80% of new manufactured home buyers taking out much smaller loans on homes that they can actually afford; who have a much greater need for Enterprise secondary market and securitization support; and who, as a result of continuing non-support, will either be excluded from home ownership altogether, or are (and will be) forced to pay unnecessarily high interest rates for access to any type of financing.

Second, despite the Enterprises' claims, there is information available from within the manufactured housing market (including both chattel and real estate loans), which reflects the performance of manufactured home loans originated and held in portfolio by the industry's two dominant lenders, 21st Mortgage Corporation (21st) and Vanderbilt Mortgage Corporation (Vanderbilt), both of which are affiliated with Clayton Homes, Incorporated (Clayton) and, together with Clayton, are subsidiaries of Berkshire Hathaway Corporation (Berkshire Hathaway).

Public information regarding the performance of manufactured housing loans held in portfolio by those lenders – summarized in the 2016 and 2017 Berkshire Hathaway shareholder letters – indicates performance parameters which closely parallel those for more costly site-built homes. In 2015, for example, as reported in the 2016 Berkshire Hathaway shareholder letter, those industry-dominant lenders experienced a foreclosure/repossession rate of 2.64%, a difference of less than 1% from the 1.77% foreclosure rate reported for the broader housing market at the end of the third quarter of 2015[18] -- for large numbers of borrowers with incomes significantly higher than most manufactured home purchasers. Moreover, the same lenders reported 8,444

[16] See, "Fannie Moves Aggressively on New Low-Down-Payment Loans," National Mortgage News (December 8, 2014).

[17] See, U.S. Census Bureau Cost and Size Comparison (2007-2014).

[18] See, 2016 Berkshire Hathaway Shareholder Letter.

foreclosures/repossessions in 2015, at an average loss of $18,593 per home[19], or a loss severity of 28.47%, based on a 2014 average sales price of $65,300 for all types of manufactured homes.[20] By contrast, Freddie Mac reported historical loss severities averaging 30.73% across all FICO scores and Loan-To-Value (LTV) ratios between 1999 and 2013.[21]

Further, more recent information for 2016, reflected in the 2017 Berkshire Hathaway shareholder letter, shows a slowing foreclosure/repossession rate and lessening loss severities. In 2016, the Berkshire Hathaway/Clayton finance entities foreclosed on 8,304 manufactured home loans (a reduction of nearly 2% from 2015), representing 2.5% of its total portfolio, at a cost of $150 million or $18,063 per home/loan foreclosed (a reduction of 2.85% from 2015).

What this information shows, first, is that a profitable, market-safe model exists for the origination and retention of manufactured housing loans, including manufactured housing chattel loans. Moreover, if a profitable model can be structured with higher-cost loans retained in portfolio, an even larger, more profitable – and equally safe – model could and would result from a higher volume of loans originated at the lower interest rates that would result from the Enterprises' securitization and secondary market support for such loans.

Based on all of the foregoing, therefore, the Enterprises' proposed DTS Implementation Plans do not even come close to satisfying the mandate of DTS. As MHARR stated at the February 8, 2017 FHFA-DTS "listening session:" "[A] limited manufactured housing chattel loan 'pilot program' of the type authorized by the DTS final rule and Evaluation Guidance ... 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." This stands in sharp contrast with MHARR's call "for 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 ... [that] would make affordable homeownership immediately available to millions of Americans," while allowing the Enterprises (and FHFA) to carefully monitor the performance of each batch of loans and thereby maintain full control over the process

Indeed, many will be left to wonder whether the FHFA final rule and these wholly deficient plans are actually designed to maintain the unacceptable status quo – a highly-distorted and less than fully-competitive manufactured housing consumer finance market dominated, in part, by the finance arm of the industry's largest manufacturer, where consumers pay higher-cost interest rates because of the absence of securitization and secondary market support for those loans and the enhanced competition that such support would produce.

---

[19] Id.

[20] See, U.S. Census Bureau Cost and Size Comparison (2007-2014).

[21] See, "Loss Severity on Residential Mortgages: Evidence from Freddie Mac's Newest Data," Urban Institute (February 2, 2015), supra

3. The Lack of Market-Significant and Timely Enterprise Support for Manufactured Home Chattel Loans Will Continue to Needlessly Subject Consumers to Higher-Cost Loans Within a Financing Market that is Less Than Fully Competitive

Without a robust program for the Enterprises' securitization and secondary market support for manufactured home chattel loans -- that would be fully compliant with both the letter and intent of DTS – manufactured housing consumers will remain, effectively, as captive customers, within a financing market that is dominated by just one or two lenders, that is less than fully competitive, and that charges them high-cost interest rates, specifically because of the absence of such support by the Enterprises.

Specifically, the long-term absence of Enterprise securitization and secondary market support for manufactured housing loans in general – and chattel loans in particular – has been (and is) part of the justification offered by 21st Vanderbilt and Clayton for higher-cost interest rates on manufactured housing loans than are the norm for other types of home loans. In 2011 testimony before a House subcommittee, the President of Clayton Homes stated: "... the lack of a secondary market means lenders are typically forced to hold manufactured home loans in their portfolios, which makes [the] cost of capital associated with originating manufactured home loans higher for these lenders versus those which are able to securitize real property mortgages through the GSEs...."[22]

The full implementation of DTS, however, including full chattel loan participation, would *directly* address the problem underlying such higher-cost loans by: (1) establishing a high-volume secondary market and GSE support for all manufactured home consumer loans that would help ease the pressures and risks that translate into higher interest rates and constrained credit availability; and (2) by alleviating those risks, which have largely limited today's manufactured housing finance market to a small number of deep-pocket portfolio lenders (offering higher-cost products), help encourage more lenders to enter (or re-enter) the manufactured housing market and thereby expand competition, further reducing market pressures driving higher interest rates – to the significant benefit of lower and moderate-income home buyers.

And, in fact, the nexus between the full implementation of a robust DTS-based secondary market for all manufactured home loans, including chattel loans, and expanded competition within the manufactured home consumer lending market (with corresponding downward pressure on interest rates), has been acknowledged by the corporate parent of both Vanderbilt and 21st. Thus, in 2012 congressional testimony, the General Counsel of Clayton Homes acknowledged that: "... [T]he lack of a secondary market means that lenders that want to participate in the manufactured housing market must hold these loans in their portfolios.... [S]ince only lenders that have the financial ability to hold the loans they originate on their balance sheets can participate in a

[22] See, Testimony of Mr. Kevin Clayton before the Subcommittee on Housing, Insurance and Community Opportunity, Committee on Financial Services, U.S. House of Representatives Field Hearing on [the] "State of the U.S. Manufactured Housing Industry," November 29, 2011.

meaningful way, this either eliminates or severely limits the ability of smaller lenders to enter the manufactured housing market."[23]

Because the full implementation of DTS, including full manufactured housing chattel loan participation on a going basis would itself result in lower levels of risk for lenders, it would, by its very existence, exert downward pressure on manufactured housing loan interest rates. Further, it would be highly likely to draw more – and more diverse -- lenders into the manufactured housing market, leading to enhanced competition and yet additional downward pressure on interest rates for such loans. By eliminating a substantial part of the rationale and justification for current high-cost manufactured housing loan interest rates charged by the dominant lenders, and by weakening or eliminating their dominant role in the market by engendering enhanced competition, the full implementation of DTS – including chattel loans – is arguably contrary to the direct financial interests of those lenders.

III. CONCLUSION

A permissive DTS approach to manufactured housing chattel loan support as outlined in the 2016 DTS Final Rule, the 2017 Duty to Serve Evaluation Guidance, and the Enterprises' proposed DTS Implementation Plans, is not the answer for American consumers in need of affordable housing opportunities now. Consumers have already waited nearly a decade 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 an extremely limited and constrained manufactured housing chattel loan "pilot program" of the type proposed by Fannie Mae in years two and three of its proposed Implementation Plan (subject to uncertain FHFA approval) solve the fundamental deficiencies that DTS was designed to remedy -- and would be a prescription for ultimate failure because: (1) it would 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 be too small, too limited, too restrictive (and too late) to properly measure or gauge success in a market comprised of millions of Americans.

Consequently, the proposed DTS Implementation Plans submitted by the Enterprises should be withdrawn and modified for re-submission at a date certain within 90 days of the conclusion of the public comment period. In the place of no chattel "pilot program" whatsoever in the case of Freddie Mac and an extremely limited, voluntary "pilot" DTS chattel program in the case of Fannie Mae, revised and reformed Enterprise DTS Implementation Plans should specifically seek FHFA approval (which should and must be granted) for a series of Enterprise-securitized chattel loans in market-significant 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

[23] See, Testimony of Mr. Tom Hodges before the Subcommittee on Financial Institutions and Consumer Credit Committee on Financial Services U.S. House of Representatives Hearing on The Impact Dodd-Frank's Home Mortgage Reforms: Consumer and Market Perspectives, July 11, 2012, at p. 6.

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.

For all of the foregoing reasons, FHFA should remand the Enterprises' May 8, 2017 DTS Implementation Plans for modification and re-submission with an express commitment to provide securitization and secondary market support for all types of manufactured housing consumer loans – including chattel loans – in market-significant numbers based a 2017 production baseline of approximately 100,000 HUD Code manufactured homes, within an expedited period of within one-year of initial FHFA plan approval.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Michael Crapo
Hon. Sherrod Brown
Hon. Jeb Hensarling
Hon. Maxine Waters