Manufactured Housing Institute

September 16, 2009

Alfred M. Pollard
General Counsel
Attention: Comments /RIN 2590-AA27
Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
Washington, D.C. 20552

Dear Mr. Pollard:

The Manufactured Housing Institute (MHI), a trade association representing all segments of the factory-built housing industry including manufacturers, lenders, community owners and retailers, appreciates this opportunity to submit its comments regarding the Advanced Notice of Proposed Rulemaking (ANPR) for the "Duty to Serve Underserved Markets for Enterprises" (DTS) issued by the Federal Housing Finance Agency (FHFA).

Background

In the Housing and Economic Recovery Act of 2008 (HERA), Congress mandated that the Government Sponsored Enterprises (GSEs) have a "duty to serve" the manufactured housing marketplace. Both Congress and MHI believe it is vitally important that the GSEs play a major role in ensuring the availability of affordable financing for low-to-middle income borrowers through adherence to the DTS. Because manufactured housing is so prevalent in rural markets across the country, greater involvement in manufactured housing would not only help the GSEs fulfill their affordable housing mission, it would also assist them in meeting their DTS for rural markets which is also identified in HERA and in the ANPR as an underserved market.

Manufactured housing comprises an important share of this nation's affordable housing stock and supply. At an average price of roughly $65,000, the typical new manufactured home is affordable by almost any definition. MHI has worked tirelessly to ensure access to financing for those who wish to purchase or refinance a new or existing manufactured home, yet conditions in this lending space have become dire. Despite a recent track record of excellent loan performance, there exists minimal liquidity for manufactured home lenders, especially since the onset of the credit crunch. Construction of new manufactured homes is expected to be approximately 55,000 for 2009, a precipitous drop from 370,000 homes constructed in 1998.

Manufactured home loans for consumers can be grouped into two primary categories – real property mortgages and personal property loans. Lending conditions in each of these sub-groups have been severely weakened and would benefit greatly from increased activity from the GSEs. Real property mortgages are available to borrowers who wish to finance their manufactured home and land together, while a personal property loan is used if the borrower is financing the home only. In the latter case, the land is typically leased (e.g. manufactured housing community) or the home is sited on land (such as a family farm) that is already owned by the borrower. Manufactured home communities are typically financed with commercial loans.

The ANPR poses several questions in which the FHFA seeks guidance in developing a proposed rule to implement the DTS. Below, MHI will address these questions (Q) with our response (R) in the order in which they are presented in the ANPR.

Manufactured Home Parks (Land-Lease Communities)

The ANPR states that the GSEs currently purchase loans secured by manufactured home land lease communities (parks).

Q: Should these transactions be considered under the DTS?

R: The ownership of a manufactured home sited in a land-lease community is one of the most affordable forms of home ownership. However, the recent slowdown in commercial lending has made it extremely difficult for owners of these land-lease communities to refinance their properties. Many of these communities could soon end up in foreclosure if commercial lending conditions do not improve and owners are again able to secure adequate financing. When an entire manufactured home community is foreclosed upon, it is often the families living in the communities that suffer the most.

MHI strongly believes that the GSEs should continue, and even increase, the purchase of commercial loans which fund manufactured housing communities as part of their multifamily affordable housing goals. In 2008, Fannie Mae's multifamily loan volume through its Delegated Underwriting and Servicing (DUS) program was approximately $33 billion, however only $1 billion of that total volume was in manufactured home communities. Historically, manufactured housing community loans have performed extremely well, and land-lease communities in general offer one of the most affordable forms of homeownership for moderate-, low-, and very low-income households. GSE activity in this area is vital to maintaining the health of this sector.

We believe this activity should be considered under the GSEs multifamily affordable housing goals due to its commercial nature. If FHFA were to consider it under the DTS the manufactured industry, it must not limit or diminish the DTS for the consumer loan market per HERA's statutory intent, and the issue of DTS should in no way limit or diminish the GSEs activity in community lending.

Q: What types of flexibility can the GSEs add to their underwriting guidelines to facilitate financing for these transactions?

R: Recent program limitations have weakened the GSEs' effectiveness in this space. The maximum amortization schedule for family communities has been reduced to 25 years, and maximum loan-to-value ratios for cash-out refinancing have been reduced five percentage points to 75%. In addition, there are currently procedures and thresholds for a multifamily project to determine whether a rental unit is affordable to very-low, low-, or moderate-income families, but no such guidance for use in manufactured home communities is provided. FHFA needs to clarify or develop the applicable formula for manufactured home communities, which would help facilitate the use of manufactured home community loans for the special multifamily affordable goals.

Other limitations of the current program include how the GSEs treat communities where a portion of the residents rent both the home and the land. Current practice does not take into account cash received from the rental of the house. Only the site/ground rent is used in calculating the income received for the property. This has a negative impact on the cash flow available when underwriting a loan and this policy should be amended to be consistent with other multifamily properties. In the current economic environment, this requirement prevents many manufactured housing communities from qualifying. Another restriction limits the program to communities with 50 or more sites. This limitation makes small communities automatically ineligible for refinancing assistance from the GSEs.

A manufactured home community is a multifamily project. Therefore, in treating these transactions as commercial loans under the multifamily affordable housing goals, MHI believes these loans should have underwriting similar to those that apply to apartment complexes.

Q: Should there be differences in how resident-owned parks and investor-owned parks are treated for purposes of DTS?

R: The type of ownership of manufactured housing communities should not be determinative of the treatment they receive under any standard.

Personal Property Loans

HERA provides that the FHFA may consider loans secured by both real and personal property in evaluating whether the GSEs comply with DTS.

Q: Whether GSE purchases of personal property loans should be considered for purposes of DTS?

R: MHI strongly believes that the DTS includes a mandate that the GSEs develop loan programs that provide for the purchase of new and pre-owned personal property loans on an ongoing or a “flow” basis. A manufactured home financed with a personal property loan is among the most affordable forms of homeownership as no land is involved in the loan transaction. Today, the industry estimates that personal property loans account for two-thirds of manufactured housing lending. There are approximately 8 million manufactured homes today, about 80% of which were funded through personal property loans. Enhanced liquidity for new homes will help the existing home market as well.

At this time, the secondary market for personal property loans is essentially nonexistent. The GSEs do not currently purchase personal property loans, although the charters of both Fannie Mae and Freddie Mac have always allowed for these purchases. MHI believes that the development of a GSE program to purchase these loans on an ongoing or “flow” basis will provide much needed liquidity to manufactured housing lenders, will lower borrowing costs, and will ensure the continued availability of this important form of affordable housing.

Q: Are there consumer protection laws or standards that should apply to personal property loans?

R: There are various laws and standards, both at the federal and at the state level, that already protect consumers when making a personal property loan for a manufactured home.

First, the new HERA statute included amendments to the Truth in Lending Act (TILA). Such amendments are known as the Mortgage Disclosure Improvement Act of 2008 (MDIA). Regulation Z, which implements the TILA, was amended to implement the provisions of the MDIA.

TILA requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). The MDIA broadened the requirements under the amended TILA and Regulation Z to better protect the consumer by requiring the lender to make certain disclosures to the consumer about the terms of their loan. All loans that are subject to RESPA must get TILA disclosures. The manufactured housing industry applies the provisions of the TILA to all loans where real property is involved as well as to personal property loans. Some of the requirements of the MDIA became effective on July 30, 2009. Those requirements that affect the manufactured housing industry, including personal property loans, include:

First, TILA disclosures must be given to the customer (by delivery or placing in the mail) no later than 3 business days after the lender receives the consumer’s application for a loan; Second; closing cannot take place until on or after the 7th business day after the delivery or mailing of the TILA disclosure; third; if the APR provided in the TILA disclosure changes beyond a specified tolerance for accuracy, the lender must provide a

corrected disclosure, which the consumer must receive on or before the 3rd business day before closing; and fourth; no fees, except for a bona fide credit report fee, can be collected by the lender before the consumer receives the TILA disclosure.
Other requirements of the MDIA will become effective on October 1, 2009. One of those requirements affecting manufactured housing personal property loans is the creation of a category of “higher-priced mortgage loans”. Lenders will have to determine a consumer’s ability to pay, which will be on a loan-by-loan basis. Lenders will no longer be able to make loans on stated income. Lenders will have to make a determination of ability to pay based on the customer’s income/assets (any other information will have to clearly demonstrate that the information is probative of repayment ability).

The next federal protection in place is the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), which is also part of HERA. The SAFE Act is designed to enhance consumer protection and reduce fraud by requiring states to establish minimum standards for the licensing and registration of mortgage loan originators, including originators of personal property home loans. The SAFE Act’s primary objectives include the creation of a comprehensive licensing and supervisory system with uniform application and reporting requirements. All states are required to implement legislation that meets the minimum requirements of the SAFE Act, and most states to date have passed legislation implementing the SAFE Act. The SAFE Act also directs the establishment of a nationwide mortgage licensing system and registry. Manufactured housing lenders are required to have their loan originators licensed and registered in accordance with the SAFE Act.

Land-Home and Real Estate Manufactured Housing Loans

Q: What types of flexibility should the GSEs add to their underwriting guidelines for these loans?

R: The GSEs have existing mortgage loan programs that provide for financing of manufactured homes under a 95% loan to value (LTV) ratio. While the MH Select program provides for a 97% LTV, no loans have been originated to due the program’s highly restrictive nature. These programs are very limited primarily due to the unavailability of private mortgage insurance (PMI) for manufactured housing. Private mortgage insurance companies today routinely deny coverage for manufactured housing loans, or in the limited number of cases, coverage may be available on an 85% LTV loan where the costs of PMI are higher than for site built housing.

The requirement to have PMI on any loan greater than 80% LTV places a reliance on a private insurance product that is generally unavailable and has had a tremendously negative impact on the GSEs financing of the industry's product.

FHFA must approve some form of self insurance mechanism for the GSEs, similar to the FHA insurance program, which eliminates the dependence on a private insurance industry that for all practical purposes is on "life support" and in no position to provide sufficient loan level loss protection. The manufactured housing industry's lenders have for many years "self insured" against credit loss and can provide valuable assistance in developing the levels of reserves needed to cover losses. This mechanism can also allow FHFA and the GSEs to address non-conforming loans in rural areas where appraisals and comparables are not readily available. We believe that a graduated premium, depending on the LTV and the credit evaluation, is a model the industry can embrace.

Another underwriting issue relates to appraisals. Manufactured home appraisal has two unique situations: 1) a new home purchase that involves the cost of the home and all typical installation and set up items and, 2) an existing home purchase where the home is already sited and ready for occupancy. The unique nature of the manufactured housing land-home transaction has resulted in the need for flexibility in appraisal methods because the typical MH land-home appraisal requires both a market analysis and a cost analysis. The majority of land-home appraisals for manufactured housing occur in rural areas with little or no comparable sales data, thereby limiting the effectiveness of the sales comparison approach. There needs to be latitude for appraisers to determine whether or not the sales comparison approach, the cost approach, or a blend of the two is the best measurement of value.

Underwriting guidelines for land-home transactions should also maintain personal property characteristics for titling purposes, as opposed to real property characteristics. We believe that maximum flexibility should be provided to the GSEs in permitting lenders to select the most effective means of default resolution. There are basically three broad categories of lien perfection for manufactured housing. The first category, home only loan transactions, occurs when a security interest is recorded on the title of the home and the home remains personal property and not affixed to the real estate. The second category is the traditional mortgage transaction where the lien recordation and perfection is on the real estate and all improvements including the home. The lender follows the normal foreclosure procedures identical to those of site built homes. The third category is essentially a hybrid of the previous two. The lender files their lien on the home only and records a lien against the real property as well. This allows the lender the option of separating the home from the real estate for both a quicker resolution towards default resolution and quite possibly a lower loss severity. This third option provides lenders with maximum flexibility in protecting their secured interests.

Q: What are the relative advantages and disadvantages to borrowers of personal property loans, land-home loans, and real estate loans and on appropriate definitions for each?

R: Regarding definitions, the industry generally adopts the following usage:

Personal property loans are loans that secure the manufactured home only because land is not part of the purchase or financing. The land on which the home is placed is typically leased (e.g. manufactured housing community) or the home is sited on land (such as a family farm) that is already owned by the borrower.

Real property conforming mortgage loans include both the acquisition of the home and the land as part of the loan transaction, and which meet the underwriting requirements of the GSEs.

Land-Home non-conforming mortgage loans include both the acquisition of the home and the land as part of the loan transaction, but are “non-conforming” in that they do not meet one or more of the GSEs underwriting requirements.

The advantages of personal property loans include: the overall principle loan amount is more affordable due to the absence of land in the transaction: no appraisal, survey, or PMI is necessary which lowers closing costs; the customer does not encumber any real property; tax, titling fees, homeowners insurance and service warranties can be financed; and the transaction is generally faster. The main disadvantage for a borrower is that this type of financing is offered by a limited number of lenders because local community banks generally do not offer “home only” financing.

The advantages of land-home (non conforming) mortgage loans include: (a) lenders assume liability for unpaid property taxes and have a tracking system that assures that each loan has the appropriate insurance in force. Therefore, historically most lenders do not require an escrow account thereby reducing the monthly expense to the customer. If future regulations or the GSEs require that all loans having greater than an 80% LTV must escrow for insurance, the industry stands ready to comply; (b) closing costs are lower because of the absence of broker’s fees, title insurance and other fees commonly found on a HUD-1 form; (c) because land only appraisals cost less due to the rural nature of these transactions, lenders do not require two comparables instead choosing to use a cost plus approach to determining the maximum loan limits which helps more borrowers qualify; (d) and real property taxes on land home transactions are deductible at the federal level. Disadvantages of land-home loans include: (a) interest rates are generally higher due to the absence of a secondary market for these loans. Due to the unavailability of mortgage insurance, lenders assume credit loss risk and build a risk premium into the pricing; (b) and loan availability is very limited because there are a limited number of lenders that offer these loan products or have the ability to portfolio these loans.

The advantages of real property mortgage loans include: there is greater access to capital through the GSEs; the GSEs provide a measure of standardization for loan programs and documentation; and loan products are offered by a wider array of lenders than available for either personal property or land-home. Disadvantages of real property loans include: as noted above, the absence of PMI requires borrowers to make 20% or greater down payments, a very high hurdle for low- and moderate-income homebuyers; and the GSEs have underwriting standards for manufactured housing that are much more restrictive than for site-built homes, notwithstanding the fact that manufactured housing loan performance has improved greatly over the past few years.

Q: How can the GSEs provide greater standardization and liquidity to the market and protect borrowers?

R: The GSEs can provide greater standardization by developing reasonable loan documentation requirements that can serve as a model for the entire manufactured housing industry. Enhanced liquidity will only result from the GSEs greatly ramping up the volume of manufactured housing loan purchases.

Evaluation of Performance

There are four major areas of evaluating the GSEs compliance with DTS: loan products; lender outreach; loan purchases; and grants.

Loan Products Test

Q: What types of loan products, underwriting flexibility, and innovative approaches can the GSEs develop to serve the manufactured housing marketplace?

R: As mentioned above, the GSEs need to purchase personal property loans on a flow basis because they are the essence of affordable home lending in this country. These loan products should be carefully structured to ensure their sustainability. For example, loans should have fixed interest rates with no teaser; a fixed term of years; and no prepayment penalties. Such standards will help ensure that the customer understands the transaction and can stay in the home. Loans should also be priced appropriately, from the lender's standpoint, to allow a sufficient spread for servicing, profitability, and loss absorption.

The GSEs should also consider programs specific to land-lease community owners that are currently providing financing their residents who are especially in need of affordable housing. The model of intensive onsite servicing by the community owner combined with the fact that the community owner has invested themselves results in minimized loss severity even with lower credit profile borrowers. Most owners are capable of taking back defaulted loans and absorbing resulting losses, but the liquidity for providing initial home loan funding is limited.

Outreach to Lenders Test

Q: What types of outreach to loan sellers and other market participants should the GSEs engage in?

R: The GSEs need to reach out and attract multiple, active participants that can sell loans and have mortgage backed securities issued on a continuous basis. A viable market will only result if the bar isn't set too high with unreasonable standards that could restrict new lenders participating in GSE programs.

Loan Purchases Test

While the FHFA can consider loan volume, it cannot establish specific quantitative targets nor evaluate the GSEs solely on the volume of loans purchased.

Q: How should the FHFA implement the DTS consistent with this restriction, and what non-qualitative evaluation methods would be appropriate?

R: As noted above, the key non-qualitative evaluation method is to attract multiple, new active lenders that would compete and provide a robust marketplace by lowering costs for manufactured housing home buyers.

Q: Should the GSEs be measured by number of units financed, number of loans purchased, or unpaid principle balance?

R: MHI believes that the best method to measure success for the manufactured housing DTS is the number of loans purchased as a percentage of home sales on an active, flow basis. Historically, mortgages on manufactured homes have been purchased by the GSEs, but under much more restrictive policies than those which are applied by the GSEs to their site-built mortgage purchases. Stricter underwriting standards and loan-level price adjustments for mortgages on manufactured homes have prevailed since 2003, greatly limiting the purchases of these loans by the GSEs. According to HMDA statistics, in 2007 manufactured housing represented over 11 percent of all new home sales, but loans on manufactured homes represented less than one percent of all GSE loan purchases despite the fact that a disproportionately large share of these loans qualify for credit toward the affordable housing goals.

MHI would like to see a database developed regarding sales of pre-owned homes measured as a method to measure GSE activity in these markets on an annual basis.

Q: What is the advantage of using a number of loans purchased test?

R: We believe the number of loans purchased as a percentage of homes sales is truly representative of how well the GSEs will comply with the DTS test. Creating affordable housing opportunities in underserved markets is best achieved by providing loan programs that encourage first-time homebuyers to purchase today's manufactured homes. The quality of construction has never been better and installation standards that apply today have never been higher.

<u>Grants Test</u>

Q: What types of investments and grants should the GSEs make?

R: One way to showcase the advantages of manufactured housing in urban areas, where affordable housing is a perennial problem, is through in-fill projects. Currently, urban in-fill is cost-prohibitive because the placement of only home in a geographic area eliminates the cost advantages associated with constructing, transporting, site-development, installation and utility hook-ups of a certain volume of manufactured homes. Grants for urban in-fill projects will not only showcase manufactured housing to the surrounding urban community and increase demand; it would also provide a benchmark for evaluating both the home's performance and the loan's performance with the surrounding site-built community.

Sizing the Market

The volume of loan purchases should be evaluated relative to the market opportunities available to the GSEs.

Q: What is the best way to estimate the manufactured housing marketplace?

R: The existing manufactured home market is estimated at approximately 8 million homes as measured by the U.S. Census Bureau. Over the past twenty years, manufactured homes have accounted for approximately 20% of all new homes built in the United States, however in the past two years manufactured housing has only accounted for approximately 11% of all new homes built. As HERA's statutory language provides, the GSEs "shall provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market" for underserved markets. For manufactured housing, the GSEs leadership should result, at a minimum, in manufactured housing attaining in the near future its traditional 20 % share of the new home marketplace.

Evaluating Methodology

The overall rating for the GSEs will be either: Outstanding; Satisfactory; Needs to Improve; or Noncompliance. The rating will be based upon the four criteria outlined above: Loan Products; Outreach to Lenders; Loan Purchases; and Grants. Each criterion need not be given equal consideration. The ANPR provides an example: the Outreach test might be weighted less than the Loan Product or Purchase tests with the Purchase test receiving more consideration for manufactured housing.

Q: Does this methodology make sense?

R: MHI believes this methodology does make sense, and that the various criteria should receive different weightings. As the ANPR example provides, we also believe the purchase test should receive the greatest weighting. In mandating the DTS for manufactured housing, Congress recognized that the GSEs have failed to create a secondary market for one of the main sources of affordable housing in this country. The best way to create a viable, liquid secondary market for affordable home buyers is by creating a sufficient volume of loans that will lower interest rates, points, fees and other closing costs.

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MHI looks forward to working with the FHFA and the GSEs in the months ahead regarding appropriate standards to apply to the DTS for manufactured housing. If you need further information regarding any area discussed in this comment letter, please contact Brian Cooney of MHI (brian@mfghome.org; 703.558.0660).

Sincerely,

Thayer Long
Executive Vice President
Manufactured Housing Institute