Mississippi Manufactured Housing ASSOCIATION

Post Office Box 320369 • Jackson, MS 39232-0369
601-939-8820 • Fax 601-939-7988
www.msmmha.com

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VIA FED-EX

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

RE: Advance Notice of Proposed Rulemaking–RIN 2590-AA27
74 Federal Register No. 148, August 4,2009,Page 38572
Duty to Serve Underserved Markets for Enterprises

Dear Mr. Pollard:

The following comments are submitted on behalf of the Mississippi Manufactured Housing Association (MMHA) in response to the Advance Notice of Proposed Rulemaking (ANPR) concerning the "Duty to Serve Underserved Markets for Enterprises" published by the Federal Housing Finance Agency (FHFA) in the Federal Register on August 4, 2009.

MMHA is the state trade association representing member companies and individuals who are engaged in manufactured housing retail sales, manufacturing, service/supply, community operations and developing. MMHA is dedicated to working on behalf of our members to create a more positive business environment for our industry. We lobby our state legislature as well as the U. S. Congress on issues that effect our members. Our members have been severely impacted by the economic recession and discrimination in the financing of manufactured housing that "Duty to Serve"(DTS) is designed to rectify.

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 MMHA 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. 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 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. Over 22 million people across the country have chosen manufactured housing as their dream home. At an average price of roughly $65,000, the typical new manufactured home is affordable by almost any definition. In Mississippi for the past 4 years, one out of every four new home starts has been a manufactured home. The 2000 census reported that 522,350 Mississippians are living in manufactured homes which is a little over one fourth of our population. However because of the economy and the lack of financing opportunities, we have seen a 58% decline in our industry from last year. The interest by the public to buy manufactured homes is still very high, but there are fewer opportunities in the finance industry to fund these needs.

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. In Mississippi, there will be a 60% decrease in home shipments in 2009.

Manufactured home loans 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 home place) that is already owned by the borrower. Mississippi is a rural state and we have many families who choose to buy a manufactured home for their children and have it placed on the home property. We also have numerous families that purchase a manufactured home for their elderly parents and have it located on their personal land. In both of these examples, the home would be classified as personal property.

The ANPR poses several questions in which the FHFA seeks guidance in developing a proposed rule to implement the DTS. Below, MMHA will address some of these questions (Q) with our response (R.)

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 so that owners are again able to secure financing. When an entire manufactured home community is foreclosed upon, it is often the families living in the communities that suffer the most.

MMHA 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. Approximately $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. GSEs' 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 the applicability of this formula for manufactured home communities, which would help facilitate the use of manufactured home community loans for the special multifamily affordable goals.

Other limitations 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 rent. 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, MMHA believes these loans should have underwriting similar to those that apply to apartment complexes.

A manufactured home financed with a personal property loan is among the most affordable forms of home ownership 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 home loans today, about 80% of which were funded through personal property loans. Enhanced liquidity for new homes will help the existing home market as well.

Currently, 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. MMHA 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 protect consumers when making a personal property loan for a manufactured home.

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 the 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).

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 due to 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 in title 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; home only loan transactions is when a security interest is recorded on the title of the home only when the home remains personal property and not affixed to the real estate. The second 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 just like site built homes. The third 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 an 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 home place) 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 in that 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; (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 home buyers; and the GSEs have underwriting standards for manufactured housing that are much more restrictive than for site-built homes, not withstanding 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

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 they are sustained. 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 for lower credit profile borrowers. 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 much 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.

Information provided to MMHA indicates that the GSEs, at present purchase Federal Housing Administration (FHA) insured Title II (real property) manufactured home loans, either individually or in bulk, from approved originators and bundle those obligations for the investment market. While laudable and appropriate, any affordable housing goals credit that the GSEs receive for such federally insured transactions should not be considered for the purposes of compliance with DTS. The purpose of DTS, as was made clear throughout the legislative process leading to its enactment, is to expand the securitization through the GSEs of private sector manufactured housing loans that are not part of either the Title I or Title II FHA programs for manufactured housing. While MMHA fully supports the securitization of FHA Title II obligations by the GSEs and in fact, urges FHFA and the GSEs to **expand** such purchases to FHA Title I (home only and land home as provided by Title I rules and regulations) transactions. These transactions are not within the scope of DTS as intended by Congress, and should not be permitted to offset the GSEs' separate duty to expand the securitization of private sector non FHA loans under DTS.

Rural Housing elements of DTS: Manufactured housing is a particularly important and growing source of home ownership in rural areas such as our state of Mississippi. Accordingly, manufactured housing transactions should be part of DTS as it relates to rural housing as an "underserved market" and manufactured housing and rural housing elements of DTS. This is consistent with the acknowledgment in the ANPR that "an activity or transaction can be considered for more than one underserved market." Moreover, such double DTS credit for manufactured home transactions should provide an additional incentive to the GSEs to serve the manufactured housing market.

Grants Test

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.

In Mississippi there is an area of our state called the Mississippi Delta, which desperately needs affordable housing. A multi-family housing development using manufactured housing such as a community development could offer many of our citizens the opportunity to be a home owner. Grants for multi-housing developments should include manufactured housing which owns the definition of "affordable."

Sizing the Market

The ANPR invites comment on "how to estimate the size of the manufactured housing...market." In estimating the size of the manufactured housing market, FHFA should consider historical sales data regarding new manufactured homes, as maintained by HUD. FHFA should also consider data regarding the re-financing of manufactured homes, as re-finance transactions should be included within the scope of the duty to serve albeit accorded less credit under the Purchase Test than new home originations.

I have already mentioned in my comments that in Mississippi for the past few years , manufactured housing has been the choice of Mississippians one out of four times of new home starts. So many areas of our state are in desperate need of affordable housing, and especially in our Gulf Coast area where Katrina damaged over 60,000 homes.

CONCLUSION

The manufactured housing industry offers consumers the most affordable form of home-ownership available which can mean a dream come true for many Mississippians. Yet the housing opportunities offered by manufactured homes are being denied to millions of low and moderate income families due to the unavailability of private financing, driven by the GSEs' requirements that have left manufactured home loans under represented in the GSEs' portfolios. As Congress has recognized through the DTS provision, this failure of the GSEs must be corrected, and must be corrected expeditiously, in order to restore the quality affordable housing opportunities that so many Americans need. MMHA urges FHFA to develop proposed and final rules to implement DTS in a timely manner and to ensure such rules are in place no later than January 1, 2010.

Sincerely,

Jennifer Hall
Executive Director
Mississippi Manufactured Housing Association