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February 11, 2016

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Attention: Comments/RIN 2590-AA27
Federal Housing Finance Agency
Eighth Floor
400 7th Street SW.
Washington, DC 20219

Electronic Submission: <http://www.fhfa.gov/open-for-comment-or-input>

Re: Comments/RIN 2590-AA27
Proposed Rule Re Duty to Serve Credit On Behalf of
Manufactured Housing Communities of Arizona (MHCA) and
Manufactured Housing Industry of Arizona (MHIA)

Dear Sir:

The proposed Rule Notice requests comments, among other things, on the following questions (80 FR 79190):

13. Should the Enterprises receive credit for purchasing chattel loans, on an ongoing or pilot basis? If so what improvements should be made in the process for originating and servicing that would make chattel loans safer for purchase by the Enterprises and safer for borrowers?
14. Should Duty to Serve credit be available for Enterprise support of chattel-titled manufactured homes where the units are sited in manufactured housing communities for which an Enterprise has purchased the blanket loan and the blanket loan purchase qualifies for Duty to Serve credit?
15. If FHFA allows Duty to Serve credit for Enterprise support of chattel lending, should the tenant protections as described in “Manufactured Housing Communities with Tenant Protections—Proposed § 1282.33(c)(2)(iii)” below also be required? How could compliance with borrower and tenant protections be

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implemented and monitored within the operational systems and capacities of the Enterprises and those of their seller/ servicers and other counterparties?

Our organizations believe the answers to the first two questions are in the affirmative. As to the third question, we believe that in many states, and in particular in Arizona all but one of the protections called for are already in place under state law.

Regarding the single suggested protection that is not in place, the right of tenant organizations to match an offer to buy a manufactured home community, we believe that the alternatives in place in Arizona and probably elsewhere are sufficient to afford desired protections.

Mandating a true right of first refusal in favor of tenant organizations would have far reaching negative effects on the value of manufactured home communities, and would reduce the value of communities collateralizing GSE backed loans to their owners.

We believe Duty to Serve credit should be available for both new and used manufactured homes, and also for pre-HUD mobile homes that have been upgraded to meet state standards comparable to HUD standards in those states where programs exist covering such upgrades.

Background

Manufactured Housing Communities of Arizona (MHCA) is an Arizona association composed and representing the interests of operators of mobile home parks and manufactured home communities statewide. Manufactured Housing Industry of Arizona (MHIA) is an Arizona association composed and representing the interests of manufacturers of manufactured homes and retailers, brokers and installers of mobile and manufactured homes statewide.

While many parts of the proposed rule affect the industries represented by these associations, we believe that other commenters will address those concerns. We are directing our comments at the above three questions since we believe they may have the greatest impact on the potential survival and health of our industries in Arizona.

Since June 15, 1976, the National Manufactured Housing Construction and Safety Standards Act of 1974 (Act), as amended by the Manufactured Housing Improvement Act of 2000 has controlled the production of "Manufactured Homes." Similar units produced before that time are known as "Mobile Homes" and were built to standards enforced by the individual states in which they were manufactured. These are sometimes referred to as "pre-HUD mobile homes."

Statistics concerning the manufactured housing community industry in the United States are inconsistent and largely inaccurate. We believe it is safe to say that no one really knows how many manufactured home communities/mobile home parks there are in this country or, for that matter in this state. We believe there are approximately 1,000 such communities in Arizona comprising approximately 150,000 rental spaces.

With very minor exceptions, manufactured/mobile homes located in these communities are chattels, covered by certificates of title issued by the Arizona Motor Vehicle Division. While Arizona does have a law permitting (under extremely limited circumstances) the affixation of such homes to rental spaces so that they constitute real property eligible for financing as real estate, community operators have steered away from permitting this due to the serious problems posed to their own ability to finance and eventually sell their communities.

Consequently, resident owned homes in these communities must be financed as chattels if they are to be financed at all.

There is a significant demographic divide in the composition of these rental communities. We believe that about half the rental spaces are located in "age 55+ communities" populated by persons over that age. A significant portion consists of newer, larger manufactured homes occupied by relatively affluent senior citizens. By and large this population either owns their homes outright or has little difficulty securing financing from the limited sources that exist. But many "age 55+ communities" are the home of low, fixed income seniors struggling to make ends meet. If it is necessary to finance a home, these people generally have no source of funding.

The remaining half of the population occupies rental spaces in "all age communities" otherwise known as family communities. A great many of these residents occupy older pre-HUD mobile homes. For the most part this population is low income, either working blue-collar jobs or dependent on government assistance. A majority of these households include minor children. And in Arizona, a significant percentage, possibly a majority of the residents are members of ethnic minority groups. Because of their limited incomes and the fact their homes are pre-HUD mobile homes, there is virtually no institutional financing available to this group.

Many people who wish to own their own home and are attracted to manufactured housing because of its affordability, quality, value and, for manufactured homes, their federal certification, are unable to purchase a mobile or manufactured home. Manufactured home production has declined enormously and many of the industry's production facilities have closed. This represents a serious loss of affordable housing opportunities, especially for lower and moderate-income families. Much of this decline is due to the almost non-existent availability of consumer financing for mobile/manufactured home purchases.

Contributing to this are (1) discriminatory federal policies concerning the securitization of manufactured home loans and particularly the home-only "chattel" or personal property loans that constitute the vast majority of mobile/manufactured home consumer loans; and (2) inadequate sources of mobile/manufactured home financing and a non-competitive manufactured home financing market.

In the past, rental community operators to avoid these problems often acquired homes and sold them to residents, engaging in seller financing. Typically the seller/community operator would enter into an installment sale agreement with the buyer/resident under which payments would be made on the home. When the scheduled payments were completed the lien on the title would be released and the buyer/resident would own the home free and clear.

However the enactment of the SAFE Act and provisions of Dodd-Frank legislation have redefined sellers under these circumstances as "loan originators" subject to regulatory and licensing requirements that are as a practical matter impossible for community operators to satisfy. Having their loans originated by third party professional loan originators adds so much to the cost of financing as to make it impossible to finance and thus sell a smaller older home in such a community.

To reverse this decline we believe it is essential that all types of new and used mobile/manufactured homes, chattels as well as those legally affixed to the land, be eligible for GSE mortgage financing.

Comments

We offer the following comments addressing the three questions posed above:

1. **Should the Enterprises receive credit for purchasing chattel loans, on an ongoing or pilot basis?**

Yes. Not only do we believe chattel loan financing on manufactured homes should be credited, but it should also extend to both new and used manufactured homes, and certain older, pre-HUD mobile homes should be credited as well.

Two elements come into play in deciding to make a secured loan. The value of the collateral is one and that is extensively considered below. But perhaps of greater importance is the creditworthiness of the borrower. It stands to reason that a lender making a chattel loan on a manufactured/mobile home will evaluate the creditworthiness of the proposed borrower using whatever criteria it adopts.

But in the case of a home in a manufactured home community/mobile home park, that borrower will also need to satisfy the landlord's standards for residency in order to become a tenant. This second level of scrutiny provides additional assurance that the borrower is likely to perform as required in making payments on the loan and preserving the collateral.

Manufactured homes are built to national standards in force since 1976. The rigorous standards to which these homes are built ensure that they retain value sufficient to provide good security for chattel loans.

The tens of thousands of pre-HUD mobile homes occupied in Arizona rental communities were not built to national standards. As older homes, they also have suffered the ravages of time. Many are obsolescent and worn out and in that condition would not by any standard be suitable collateral for any kind of loan.

However Arizona has a state program for upgrading, inspecting and certifying pre-HUD mobile homes as meeting state standards that in many respects are comparable to HUD standards. *See*, Title 41, Chapter 16, Article 2, Arizona Revised Statutes (ARS). Included in this is a provision for financial assistance to certain low-income persons in covering the costs of such

improvements. *See*, ARS § 41-2157. We believe many other states have comparable programs and further that older pre-HUD homes certified as in compliance with such state standards should also be credited.

Although pre-HUD mobile homes cannot be expected to have the useful life of newer manufactured homes, their costs are far lower and the amount of financing per home is likewise much less. This may perhaps be reflected in shorter amortization periods for loans on such homes.

Older homes represent affordable housing to families and minorities and are unique since in addition to their low cost, they represent an opportunity to achieve home ownership. With the recent advent of the myriad of federal financial reform legislation, these opportunities have largely vanished for this demographic. Allowing credit not only for new and used manufactured homes but also upgraded and certified pre-HUD mobile homes will greatly expand home ownership opportunities for a population largely deprived of them at present.

If a pilot program is contemplated, we would be happy to co-sponsor it in Arizona. Our abundance of these communities serving all demographics and our legal climate would seem to make Arizona an ideal location for a pilot program.

2. Should Duty to Serve credit be available for Enterprise support of chattel-titled manufactured homes where the units are sited in manufactured housing communities for which an Enterprise has purchased the blanket loan and the blanket loan purchase qualifies for Duty to Serve credit?

A number of Arizona manufactured home communities are financed by Fannie Mae loans and Fannie Mae financing is probably the leading source of such loans at present. Recently Freddie Mac has begun making manufactured home community loans in Arizona. In fact the first Freddie Mac manufactured home community loan was on an Arizona community (Longhaven Estates in Phoenix).

These GSE's already have an investment and interest in the quality of manufactured/mobile homes in the communities they have financed since the value of the communities that collateralize the loans are largely dependent on the quality, maintenance and appearance of the homes in them. Additionally many of these communities have a percentage of pre-HUD mobile homes in them.

Providing financing for the homes themselves would clearly enhance the value of the communities and thus the value of the existing and future loans made to community operators.

3. If FHFA allows Duty to Serve credit for Enterprise support of chattel lending, should the tenant protections as described in “Manufactured Housing Communities with Tenant Protections—Proposed § 1282.33(c)(2)(iii)” below also be required? How could compliance with borrower and tenant protections be implemented and monitored within the operational systems and capacities of the Enterprises and those of their seller/ servicers and other counterparties?

There are five elements proposed as tenant protections. We will comment on each of them. It is proposed that a community's pad leases have the following pad lease protections at a minimum for it to be eligible for chattel financing:

(A) Minimum one-year renewable lease term unless there is good cause for nonrenewal.

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

(B) Minimum thirty-day written notice of rent increases.

Arizona Law requires landlords to give a minimum 90-day notice of rent increases.

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

Arizona law now gives tenants a minimum seven-day grace period for rent payments, and the right to cure defaults on rent payments at any time thereafter until a court judgment of eviction is entered.

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

Arizona law allows a tenant to sell a home without having to first relocate it out of the community so long as it remains in the tenant's name even after eviction. That generally gives the tenant no less than 60 days after any eviction to get the home sold. The law requires the landlord to approve the buyer of the home as a new tenant unless there is a reasonable basis to reject the buyer's application. Arizona law gives tenants the right to post up to a 12" X 18" for sale or open house sign on their homes at all times.

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

Arizona law now requires not less than 180 days' notice before a rental community can be closed. There is no mandated requirement to permit a tenant organization to match an offer to match the sale offer though there are provisions allowing the formation of tenant organizations

for the purpose of trying to purchase communities, and requiring landlords to state what their policy is about allowing tenants a right of first refusal to buy the community.

Historically community operators in Arizona have opposed such a requirement since it would severely hurt the ability to sell communities--prospective buyers would be hesitant to do all the work that goes into making an offer just to have someone else jump in and match it.

In summary, we do not believe adding these protections would be detrimental to our industries since all but one of them exist in our laws anyway. As to the right to match an offer, we do not believe that is in the best interests of the industry or, for that matter the GSE entities making loans against them since the first refusal right would negatively affect the values of the communities themselves.

Compliance with borrower and tenant protections is already provided for in Arizona law by a combination of statutory requirements on landlords (e.g., duty to enforce community rules and regulations and to maintain community facilities) and enforcement mechanisms (e.g., existence of dedicated administrative law judge procedure for tenants to quickly and inexpensively have complaints against landlords adjudicated). We cannot comment on internal compliance procedures by GSE's and loan servicers.

Closing Summary

The manufactured housing community/mobile home park industry has been hard hit by the lack of financing available on homes titled as chattels since the enactment of regulatory reform legislation starting nearly a decade ago. As that industry has suffered, so too have retailers, installers and manufacturers of manufactured/mobile homes.

Since the communities have historically provided affordable housing and home ownership to lower income and minority households, they have been the ultimate victims, deprived of the opportunity to buy their own homes at the very low prices formerly available. Moreover as those who owned their homes before all this took place go to sell them, they find virtually no buyers since the only way to buy, generally is for cash.

We believe allowing GSE sponsored loans on homes titled as chattels as described above can largely mitigate these problems.

Sincerely,

Michael A. Parham

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