Manufactured Housing Association for Regulatory Reform

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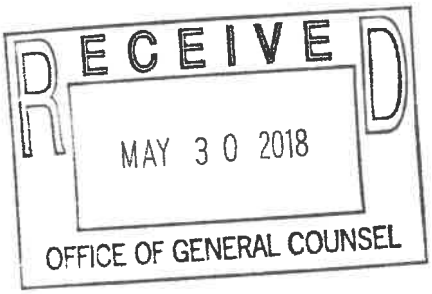

Hon. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Constitution Center
Eighth Floor
400 Seventh Street, S.W.
Washington, D.C. 20219

Re: FHFA Regulatory Review – No. 2018-N-03

Dear Mr. Pollard:

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

On April 5, 2018, the Federal Housing Finance Agency (FHFA) published a "Notice of Regulatory Review" in the Federal Register,[1] seeking comments from interested parties pursuant to FHFA's 2012 Regulatory Review Plan (Review Plan), regarding "existing significant [FHFA] regulations to determine whether any [such] regulation should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving its objectives."[2] (Emphasis added). Although the Review Plan, according to its terms, does not encompass "regulations that were adopted or substantially amended within two years prior to the issuance of a Notice of Regulatory Review," the April 5, 2018 notice nevertheless states that "members of the public may comment on recently adopted or amended regulations, and FHFA will take those comments into account as appropriate."[3]Accordingly, and in compliance

[1] See, 83 Federal Register, No. 66, April 5, 2018 at p. 14605, et seq.

[2] Id. at p. 14605, col. 3.

[3] Id. at p. 14606, col. 1.

with this express invitation, the following comments address FHFA's December 29, 2016 final rule[4] to implement the "Duty to Serve Underserved Markets" (DTS) provision of the Housing and Economic Recovery Act of 2008 (DTS Final Rule) and related DTS oversight and implementation regulatory activity by FHFA, including, but not limited to, its review and evaluation of the May 2017 DTS implementation plans submitted by the two Government Sponsored Enterprises (Enterprises).

FHFA, as an independent federal regulatory agency with statutorily-prescribed oversight authority over the Enterprises, adopted a final regulatory review plan, pursuant to Executive Order 13579[5], on February 22, 2012.[6] Pursuant to that Review Plan, periodic reviews of existing FHFA regulations may "consider" eight enumerated factors. These include two de facto "catchall" provisions -- applicable to the regulations and regulatory actions addressed herein -- which allow FHFA to review and amend and/or repeal such regulations and/or regulatory actions based on: (1) "occurrences and developments as determined by FHFA to be relevant to a review for inefficiency or unwarranted regulatory burden;" and/or (2) any "other factors as determined by FHFA to be relevant to determining and evaluating the need for and effectiveness of a particular regulation."

In accordance with this FHFA regulatory review plan, and for the reasons set forth in greater detail below, MHARR maintains and asserts that the December 29, 2016 FHFA final DTS implementation rule – codified within FHFA's regulations as 12 C.F.R. Part 1282, Subpart C – and FHFA evaluation of the DTS implementation plans already submitted[7] and to be submitted in the future by the Enterprises and related FHFA DTS "Evaluation Guidance," should be substantially amended to affirmatively require market-significant purchases of manufactured housing personal property (i.e., chattel) loans and to ensure full and fair competition within the manufactured housing consumer financing market in order to: (1) fully comply with both the letter and intent of HERA section 1129;[8] and (2) to render those regulations (and implementation plans) effective (and therefore, simultaneously "more effective") – which they currently are not – in implementing and fulfilling the statutory mandate of DTS with respect to federally-regulated manufactured housing.

In support of these comments, MHARR hereby incorporates by reference herein, as if restated in full, its March 15, 2016 written comments on FHFA's December 18, 2015 proposed DTS implementation rule,[9]and its July 10, 2017 written comments on FHFA's DTS Implementation Plan Evaluation Guidance.[10]

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[4] See, 81 Federal Register, No. 250 at p. 96242, et seq.

[5] See, Executive Order 13579 ("Regulation and Independent Regulatory Agencies") July 11, 2011.

[6] See, 77 Federal Register, No. 35 at 10351, et seq., "Regulation and Independent Regulatory Agencies."

[7] I.e., As part of any order revising the regulations and/or Evaluation Guidance upon which the Enterprise DTS implementation plans received previous "non-objection" determinations from FHFA, FHFA should direct the Enterprises to submit forthwith amended DTS implementation plans based upon such revised regulations and Guidance.

[8] See, 12 U.S.C. 4565.

[9] See, Attachment 1, hereto.

[10] See, Attachment 2, hereto.

II. BACKGROUND

A. THE DUTY TO SERVE MANDATE

The DTS mandate, as set forth in HERA, represents both: (1) a congressional finding that the Enterprises (and by extension FHFA) have not -- and still do not -- properly serve the manufactured housing market and manufactured housing consumers, despite their existing Charter obligations to support homeownership opportunities for very low, low and moderate-income Americans; and (2) a remedy for that specific failure, designed to materially[11] increase the participation of the Enterprises in the manufactured housing market. DTS, accordingly, is a mandatory directive to the Enterprises to, among other things: "develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low, low and moderate-income families" (see, 12 U.S.C. 4565(a)). Moreover, to ensure that the term "mortgages" is not misconstrued in the unique context of manufactured housing to limit the scope of DTS to manufactured home real estate "mortgage" loans, the same section of HERA expressly provides that "in determining whether an Enterprise has complied" with DTS, FHFA -- as the Enterprises' regulator – "may consider loans secured by both real and personal property."[12](Emphasis added). (See, 12 U.S.C. 4565(d)(3)).

This express authorization and policy directive by Congress to incorporate securitization and secondary market support for manufactured home chattel loans as part of DTS, is (and continues to be) the single most significant aspect of DTS with respect to the manufactured housing market, for the simple reason that, according to the most recent data compiled by the U.S. Census Bureau, at least 80% of manufactured housing placements utilize chattel financing. Chattel placements, moreover, represent an expanding segment of the overall manufactured housing market according to the same data, having increased from 64% of all manufactured housing placements in 2007, to 80% of all placements by 2015 – a 25% increase.[13] Quite simply, then, as MHARR has pointed out previously in FHFA rulemaking dockets pertaining to DTS and its implementation, a DTS implementation rule (and corresponding DTS Evaluation Guidance and implementation plans) that effectively leave 80% or more[14] of the congressionally-designated DTS remedy market unserved (or virtually unserved) for a further indefinite period, with ten years having already elapsed since the enactment of DTS, cannot possibly comply with the statutory DTS mandate and, therefore, per se, cannot be "effective" (based on any meaningful or rational construction of that term) in implementing the statutory DTS mandate.

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[11] MHARR has consistently characterized the level of secondary market and securitization support demanded by Congress through the DTS mandate as "market-significant" support – i.e., a level of support and involvement sufficient to expand the availability of manufactured home consumer financing and, simultaneously, manufactured home sales and production, to a significant degree.

[12] I.e., So-called "chattel" loans secured by an interest in the home itself and not any underlying real property.

[13] See, U.S. Census Bureau, Cost and Size Comparison: New Manufactured Homes and Single-Family Site-Built Homes (2007-2015).

[14] Given the steadily increasing share of chattel placements during the last Census Bureau sampling period (2007-2015), it is highly likely that chattel placements at present – some four years after the close of the last sampling period – represent more than 80% of the overall manufactured housing market.

B. THE FINAL DTS RULE AND ENTERPRISE "IMPLEMENTATION" PLANS

Despite this express statutory authorization, and the obviously crucial role of chattel lending within the manufactured housing market, the final DTS implementation rule adopted by FHFA contains no provision whatsoever for the mandatory support of manufactured home consumer chattel loans by the Enterprises, and the final DTS implementation plans developed by the Enterprises -- and approved by FHFA -- provide no market-significant support (and indeed, virtually no support whatsoever) for manufactured home chattel loans during their respective three-year periods (i.e., 2018-2020). This reflects – and is entirely consistent with – the complete refusal of both the Enterprises and FHFA to recognize and acknowledge that with DTS, Congress established an unequivocal policy directing them not only to remedy their past failure to serve the manufactured housing market, but to do so in a way that necessarily ameliorates the harsh and discriminatory restrictions – imposed under other more general statutes and policies – that were abused for decades as an excuse for the Enterprises' near-total failure to provide securitization and secondary market support for the manufactured housing market. It is that failure which led Congress to specifically identify manufactured housing within DTS/HERA as a historically "underserved" market. Moreover, it is 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 – nor the Enterprises' DTS implementation plans – reflect any specific amelioration of those discriminatory restrictions whatsoever, and instead presume the continuing applicability of those restrictions as a pretext for 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. This continuing adherence to discriminatory restrictions 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 conspicuous by its absence. For three decades the Enterprises have paid lip service to – and toyed with -- the industry and its consumers, attending meetings and conferences, visiting factories and other industry facilities, and empaneling task forces and outreach groups, as a subterfuge, as is demonstrated by the absence of any tangible change in policy, or positive market results, over that extended period. Now, though, with a clear congressional directive to compel the Enterprises to properly serve the manufactured housing market and credit-worthy consumers who fall squarely within their statutory and Charter mission to promote homeownership, FHFA: (1) has adopted a

final DTS "implementation" rule which provides the Enterprises with the discretion and maneuvering room that they need to continue paying lip service to -- and toy with -- the manufactured housing market without accomplishing anything of substance; and (2) has approved so-called DTS "implementation" plans that are a prescription for inaction at best and, at worst, for involvement with vested special interests – to the detriment of consumers and the broader industry.

The FHFA 2016 DTS Final Rule and the DTS implementation plans flowing from that rule, consequently, represent a failure to comply with the will and express directive of Congress that, by definition will not – and cannot – be "effective" in achieving the clear and unequivocal purposes of DTS. Accordingly, both the DTS final rule and Enterprise DTS implementation plans should be amended as described herein.

III. COMMENTS

A. THE DTS FINAL RULE AND DTS "IMPLEMENTATION" PLANS ARE NOT AND CANNOT BE "EFFECTIVE" IN THEIR PRESENT FORM

1. FHFA'S FINAL "IMPLEMENTATION" RULE FAILS TO PROPERLY OR EFFECTIVELY IMPLEMENT DTS

FHFA's fatally deficient 2016 DTS final rule – as MHARR anticipated and predicted at the time – has ensured the submission (and FHFA approval) of equally flawed and market-ineffective 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, and the 2016 Final Rule.

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 DTS 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, in its present form – which fails itself to comport with the specific congressional goals and objectives of DTS – effectively guaranteed that the ensuing DTS implementation plans produced by the Enterprises pursuant to that rule would fail to provide any

market-significant or meaningful support for such loans during their three-year coverage period (or, indeed, subsequent periods) – and that, in fact, is the case. And, given the primary mission of the Enterprises, the key outstanding question is why FHFA, as the Enterprises' regulator, would give "cover" to their failure to comply with Congress' mandate.

First and most significantly, as MHARR emphasized in its March 15, 2016 DTS final rule written comments, consumers in need of immediate access to affordable housing 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[15] -- have effectively been denied a DTS remedy of any kind for a decade already. Over that time, no specific, quantifiable progress was 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), the collection and analysis of information that could have been done years ago, was needlessly delayed, with years more of delays slated to follow, before any meaningful relief for consumers, if any, will even be possible.[16]

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 to -- and clarification of -- the mandatory "duty" established by DTS.

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[15] 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).

[16] 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 more years to come.

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.[17] This permissive formulation fundamentally fails the directive of Congress, as do the Enterprises' DTS implementation plans produced pursuant to that rule and related FHFA guidance. If Congress had intended the "duty" to serve to be optional, it would not have called it a "duty," which involves, entails and expresses 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 by the Enterprises 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 housing market represented by such chattel placements, 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, the very same homebuyers that the Enterprises were created (and exist) to serve. 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, is not – and cannot – be "effective" in implementing the DTS mandate.

The FHFA final rule -- as MHARR noted in calling for its withdrawal and substantial modification – and, subsequently, the DTS implementation plans produced by the Enterprises 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 Enterprise securitization and secondary market support for manufactured housing chattel loans. The failure to implement DTS via mandatory, market-significant 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. (I.e., the same companies holding the manufactured housing loan performance data, the lack of which the Enterprises continue to use as an excuse for failing to implement DTS for HUD Code chattel loans after more than a decade). 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 Enterprises' failure to provide securitization and secondary market support for such loans). It also means artificially restricted competition within the manufactured housing finance

[17]As set forth in FHFA's final DTS implementation rule, 12 C.F.R. 1282.33, regarding the manufactured housing market, merely refers to loans on manufactured homes "titled as real property or personal property," as being "eligible to receive duty to serve credit under the manufactured housing market." (See, 12 C.F.R. 1282.33(b), (c)).

market, which limits consumer choice and consumer financing options, and also underlies higher than necessary interest rates for such chattel loans.

2. DTS IMPLEMENTATION PLANS BASED ON FHFA's FINAL RULE AND EVALUATION GUIDANCE DO NOT AND CANNOT "EFFECTIVELY" IMPLEMENT DTS

The final so-called DTS "implementation" plan developed by Freddie Mac and approved by FHFA pursuant to its final DTS implementation rule and Evaluation Guidance, does not and cannot "effectively" implement DTS in a timely and market-significant manner. That plan, which is long on excuses and rationalizations for its near-total inaction (a decade after the enactment of DTS), would provide, at most, for a conditional, token chattel financing "pilot" program for manufactured housing in the "out" years of the three-year plan, "if approval is obtained" beforehand from FHFA,[18]which is not assured. (Emphasis added). In relevant part, Freddie Mac's DTS plan states: "Freddie Mac does not currently purchase chattel loans. We do not have the requisite systems in place to purchase chattel loans, nor do we have historical data on chattel loan performance that would allow us to make determinations about whether the purchases of these loans can be made in a safe and sound manner. *** Freddie Mac intends to conduct a systematic and incremental review to develop a product before entering the chattel market."[19]If, then, and presumably only-if such information and approvals are obtained, Freddie Mac apparently plans to purchase "200-500" manufactured home chattel loans in year-two of its plan (2019) "to help inform future product design to build out capabilities for flow path," and another "600-1,500" chattel loans in plan-year three (2020), for the same ostensible purpose.[20]

Meanwhile, Fannie Mae, in its final FHFA-approved DTS "implementation" plan, conditions its own, "out-year" DTS chattel pilot program not only on the development of additional chattel loan market and performance information after ten years of unexplained delay, but also on "FHFA approval to develop a chattel pilot ... and internal approval to purchase chattel loans."[21]Consequently, the Fannie Mae "pilot" chattel program is subject to at least three conditions precedent – i.e.: (1) development of "sufficient" chattel loan performance information, the sufficiency of which is not defined or described in the plan itself and is, therefore, totally subjective and arbitrary; (2) FHFA approval; and (3) "internal" Fannie Mae" approval, based on unstated and undefined criteria and considerations – which may never be satisfied, and at least two of which rest within the exclusive, subjective and potentially arbitrary control of Fannie Mae. If – and only if – these and other conditions precedent are met, Fannie Mae's DTS implementation plan indicates that it will purchase 1,000 manufactured housing chattel loans in plan-year two (2019) and another 1,000 chattel loans in plan-year three (2020).

To place these meager chattel loan "pilot" programs in proper perspective, with 92,902 HUD Code manufactured homes produced in 2017, even if no market growth were assumed during the years covered by the three-year DTS plans (i.e., 2018-2020), that period would see retail sales

[18]See, Freddie Mac Final DTS Implementation Plan at p. MH25.

[19]Id. at p. MH21.

[20]Id. at p. MH25.

[21]See, Fannie Mae Final DTS Implementation Plan at p. MH30.

of approximately 279,000 HUD Code manufactured homes, with approximately 223,000 (i.e., 80%) of those homes financed through chattel loans, again, assuming no change in the composition or economic characteristics of the overall market.

Against this baseline, the chattel loan programs envisioned by Fannie Mae and Freddie Mac combined – even at maximum projected capacity -- would serve 4,000 purchasers, or a mere 1.43% of the entire manufactured housing market through 2020 (or 1.79% of all projected manufactured home consumer chattel loans) – more than a decade after the enactment of DTS. Chattel loan purchases at these levels, would constitute a microscopic portion – far less than *one-one-hundredth of one percent* -- of the total mortgage portfolios of both Fannie Mae and Freddie Mac, representing: (1) a blatant, continuing failure by the Enterprises to serve the manufactured housing market contrary to law; (2) a continuation of blatant, baseless discrimination against the lower and moderate-income Americans who rely on affordable, non-subsidized manufactured housing the most; (3) a continuing abuse of – and failure to comply with – the Enterprises' mission and role as prescribed by their respective Charters; and (4) a flagrant failure by FHFA, as the Enterprises' regulator and conservator, to enforce full compliance with the statutory DTS mandate; which (5) continues to force low and moderate-income manufactured homebuyers into the arms of the industry-dominant lenders and their higher-cost loans, exactly the opposite of the relief that Congress clearly wanted to provide. Indeed, this type of alleged "implementation" of DTS not only does not help the industry and its consumers, but arguably makes matters worse – and the question is "why?"

To rationalize this pathetic, totally inadequate level of support for the nation's most affordable non-subsidized housing resource in direct violation of the DTS mandate and at a time when the U.S. Department of Housing and Urban Development's (HUD) 2017 Worst Case Housing Needs report to Congress shows a resurgence in "worst case" housing needs (i.e., Americans "who pay more than one-half of their income to rent, [or] live in severely inadequate conditions, or both") to near-record levels, the Enterprises both cite, again, a lack of recent, relevant "data and information" concerning the performance and other characteristics of manufactured housing chattel loans – data that is held by the same companies that provide such higher-cost loans and stand to benefit the most from the de facto non-implementation of DTS.

The Enterprises, then, as MHARR has stressed before, effectively seek to avoid their mandatory "duty" to comply with DTS (in a market-significant manner) by citing a lack of data that flows directly from their own previous (and ongoing) failure – in violation of their respective Charters -- to serve the manufactured housing market, which DTS was designed to remedy. Put differently, the GSEs, for ten years – and potentially indefinitely into the future – seek to avoid any market-significant compliance with the remedy for their failure to serve the manufactured housing market, by relying on the very failure to serve that market which DTS seeks to remedy.

Based on the failure of the Enterprises' DTS "implementation" plans to provide for specific, market-significant securitization and secondary market support for manufactured housing loans on an expedited, going basis, those plan fail to "effectively" implement DTS and represent conclusive evidence of the failure of both the FHFA final DTS "implementation" rule and DTS Evaluation Guidance to "effectively" implement the statutory DTS mandate.

Moreover, while both Freddie Mac and Fannie Mae bemoan the "lack of historical data on chattel loan performance,"[22]and pay endless homage to the need for guarantees of "safety" in entering a field that would expand the availability of affordable, non-subsidized homeownership for millions of credit-worthy moderate and lower-income Americans, they (and FHFA) ignore an essential point. Specifically, there is no "policy" decision for either the GSEs or FHFA to make. Congress, through DTS, made that policy decision for them – i.e., that the Enterprises have a mandatory, statutory duty to provide a remedy for consumers they have previously underserved within the manufactured housing market, to provide "new"[23] 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 manifestly 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.

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

[23] 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 -- all as acknowledged by Fannie Mae in its "final" DTS "implementation" plan: "Previously, Fannie Mae introduced a product for the financing of quality manufactured housing loans, MH Select, which had no deliveries in its last three years of availability, i.e., 2010-2012." (See, Fannie Mae Final DTS Implementation Plan at p. MH25. (Emphasis added).

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 disingenuous, 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 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).[24] 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 $360,600 in 2015),[25] 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.

Based on the foregoing, therefore, the Enterprises' 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

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

[25] See, U.S. Census Bureau Cost and Size Comparison (2007-2015).

(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.

IV. 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' DTS Implementation Plans, is not the answer for American consumers in need of affordable housing opportunities now. Consumers have already waited a full decade since the enactment of DTS and cannot afford to wait years or decades longer for results based on study, "outreach" and other substitutes for the actual market-significant support of manufactured housing chattel loans.

For all of the foregoing reasons, therefore: (1) the DTS final rule published by FHFA on December 29, 2016 – in order to render it "effective" in implementing the statutory DTS mandate -- should be amended to require mandatory, market-significant securitization and secondary market support for both real estate and chattel manufactured housing loans within the first year of the Enterprises' DTS implementation plans, and increased levels of such support each year thereafter; (2) FHFA, pursuant to such a modification of the DTS final rule, should forthwith amend its DTS Evaluation Guidance to conform with those amendments; and (3) FHFA, pursuant to those amendments, should direct the Enterprises' to withdraw, amend, and re-submit their final DTS implementation plans to include provisions for full compliance with that mandate in each year of each such amended plan.

Without these changes, the statutory DTS mandate will not –and cannot – be "effectively" implemented as designed by Congress.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Michael Crapo
Hon. Sherrod Brown
Hon. Jeb Hensarling
Hon. Maxine Waters
Hon. Mick Mulvaney (CFPB)
Hon. Neomi Rao (OIRA)
HUD Code Manufactured Housing Industry Members

Manufactured Housing Association for Regulatory Reform

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March 15, 2016

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

Mr. Alfred Pollard
General Counsel
Attention: Comments/RIN 2590-AA27
Federal Housing Finance Agency
Eighth Floor
400 7th Street, S.W.
Washington, D.C. 20219

Re: Enterprise Duty to Serve Underserved Markets

Dear Mr. Pollard:

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 18, 2015, the Federal Housing Finance Agency (FHFA) published a proposed 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) (see, 80 Federal Register, No. 243 at p. 79182, et seq.) (2015 NPRM). This follows the publication of a proposed DTS implementation rule by FHFA on June 7, 2010 (see, 75 Federal Register, No. 108 at p. 32099) (2010 NPRM) and an Advance Notice of Proposed Rulemaking by FHFA published on August 4, 2009 (see, 74 Federal Register, No. 148 at p. 38572) (2009 ANPR). MHARR's July 1, 2010 written comments regarding the 2010 Duty to Serve NPRM are hereby incorporated by reference

in this document as if re-stated herein in full, as are MHARR's July 12, 2012 written comments regarding FHFA's 2012-2014 Enterprise Affordable Housing Goals (RIN 2590-AA49).

The DTS mandate represents both a congressional finding that the two Government Sponsored Enterprises (Enterprises), Fannie Mae and Freddie Mac (and by extension FHFA), have not – and still do not -- properly serve the manufactured housing market, despite their existing Charter obligations to support home ownership opportunities for very low, low and moderate-income Americans, as well as a remedy, designed to materially increase the participation of the Enterprises in the manufactured housing market. DTS, accordingly, is a mandatory directive to the Enterprises to, among other things: "develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low, low and moderate-income families" (see, 12 U.S.C. 4565(a)). Moreover, to ensure that the term "mortgages" is not misconstrued to limit the scope of DTS to manufactured home real estate "mortgage" loans, the same section of HERA expressly provides that "in determining whether an Enterprise has complied" with DTS, FHFA -- as the Enterprises' regulator – "may consider loans secured by both real and personal property" (i.e., manufactured home-only "chattel loans") (see, 12 U.S.C. 4565(d)(3)).

Despite both the letter and obvious intent of HERA and the DTS provision, the proposed DTS implementation rule published by FHFA in 2010 would have totally excluded DTS participation for chattel and other types of non-real estate manufactured home consumer loans which represent the vast bulk of the manufactured housing consumer finance market and provide very low, low and moderate-income Americans with the most affordable access to the industry's most affordable homes. In its July 1, 2010 written comments, MHARR strongly opposed this exclusion of chattel and other non-real-estate manufactured home loans from DTS, stating: "measured against [applicable] statutory benchmarks, the DTS rule proposed by FHFA is grossly inadequate and will not produce the new programs and significant policy changes that are needed for the Enterprises to properly serve consumers of affordable manufactured housing." The public comment period for the 2010 Duty to Serve NPRM closed on July 22, 2010 (see, 75 Federal Register supra at p. 32099).

FHFA subsequently refused to proceed with the final implementation of DTS in any form – and did not issue a final rule in the administrative docket established by the 2010 NPRM -- based on: (1) a policy implemented by its former Acting Director, Edward DeMarco, effectively banning the Enterprises from adopting or implementing "new products" while under FHFA conservatorship; and (2) the Acting Director's (apparently unilateral) determination that DTS constituted such a "new product." Significantly, though, the original DTS rulemaking docket, initiated by the 2009 ANPR and 2010 NPRM (RIN 2590-AA27), was never publicly closed or terminated by FHFA prior to publication of the December 18, 2015 NPRM.[1]

Following the appointment of its current Director, Melvin Watt, in 2014, FHFA indicated that it would, in fact, "fulfill additional HERA requirements," including DTS, stating in its "2014

[1] The 2015 NPRM implicitly terminates the 2010 NPRM proceeding, stating, in relevant part: "... in view of the significant differences between this proposed rule and the 2010 Duty to Serve proposed rule, commenters on the previous proposed rule must submit a new comment letter on this new proposed rule for their comments to be considered." (See, 80 Federal Register supra at p. 79182).

Strategic Plan for the Conservatorships of Fannie Mae and Freddie Mac" (published May 13, 2014): "Other important statutory responsibilities include the Duty to Serve and Affordable Housing Goal requirements for the Enterprises. FHFA issued a proposed Duty to Serve rule in 2010, but this regulation has not been finalized. Moving forward, FHFA will revisit this HERA obligation." (Emphasis added).

MHARR subsequently determined, however, that closed-door discussions (acknowledged by FHFA personnel) regarding DTS took place between FHFA officials and parties in interest in the then-still-pending 2010 DTS rulemaking -- including the Manufactured Housing Institute (MHI)[2] and an ostensible "consumer" group -- prior to publication of the 2015 NPRM. MHARR strenuously objected to such closed discussions and advised FHFA verbally on July 9, 2015 and on July 10, 2015 in a written communication[3]: (1) that any such post-2010 NPRM (and post-2010 NPRM comment period) "discussions" with parties in interest regarding a still-pending rulemaking[4] constituted suspect – and potentially impermissible -- *ex parte* communications; (2) that applicable federal law and policy required that the occurrence and content of any such *ex parte* communications be publicly disclosed;[5] and (3) that MHARR expected FHFA to notify MHARR of its receipt of any written proposals or materials from any such party (or parties), so that MHARR, on behalf of its members, would have an opportunity to submit its own document(s) regarding DTS, to provide FHFA, at a meaningful time and in a meaningful manner, the distinct perspectives, views and interests of smaller industry businesses regarding the absolute necessity of chattel loan securitization as a component of DTS.

FHFA, though, while acknowledging verbally to MHARR that such "discussions" occurred, has not provided any disclosure of the content or substance of those "discussions." The Agency, moreover, rather than issuing the 2015 proposed DTS rule as an "amended" version of the 2010 proposed rule, has instead published the 2015 NPRM as an ostensibly "new" proposed rule (albeit under the same federal Regulatory Information Number), presumably to avoid legal challenges based on its irregular *ex parte* contacts in this matter. Nor does the 2015 NPRM expressly indicate if – and if so how – the admitted closed-door discussions and ex parte communications impacted the substance of the "new" proposed rule.

In the aftermath of the above-described closed-door *ex parte* communications, the 2015 FHFA-proposed DTS rule – despite FHFA's stated commitment to "revisit" DTS and the 2010 NPRM – continues the chattel loan exclusion of the 2010 proposed rule, stating: "As with the 2010

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[2] MHI is a national manufactured housing industry trade association. Among other members, it represents the industry's largest businesses, including Clayton Homes, Inc. (Clayton), the industry's largest manufacturer, accounting for nearly half of total annual industry production, and Clayton's finance subsidiaries, Vanderbilt Mortgage Corporation (Vanderbilt) and 21st Mortgage Corporation (21st Mortgage), which together originate seven times more manufactured home loans than any other lender and, together, dominate the manufactured home consumer finance market.

[3] See, Attachment 1, hereto.

[4] No "final" DTS implementation rule or "new" proposed DTS implementation rule had been published by FHFA at the time those "discussions" occurred.

[5] See generally, Final Report: "Ex Parte Communications in Informal Rulemaking," Administrative Conference of the United States (May 1, 2014) ("At a minimum, disclosure of post-NPRM *ex parte* communications must be sufficient to avoid the taint of secrecy that ultimately led the D.C Circuit [Court of Appeals] to invalidate … challenged agency actions" in prior decisions. See, Final Report, supra, at p. 76).

Duty to Serve proposed rule ... this proposed rule would provide credit for Enterprise activities that facilitate a secondary market for manufactured homes titled as real property but not as chattel." (Emphasis added).

For the reasons explained in greater detail below (and in MHARR's 2010 NPRM comments), the 2015 proposed DTS implementation rule fails to fully and properly implement DTS with respect to manufactured housing in accordance with the letter and intent of HERA, and will not provide the type of remedial activities and programs needed for the Enterprises to properly serve consumers of inherently affordable manufactured housing. Specifically, the 2015 proposed rule fails to live up to the mandate and vision of Congress regarding DTS for the following reasons, as explained in greater detail below:

1. The proposed rule automatically eliminates the vast majority (80% or more) of manufactured homes from DTS participation by excluding homes financed as personal property or via hybrid land-home packages;

2. The proposed rule excludes DTS participation for the industry's most affordable products and would enable continued discrimination by the Enterprises against very low, low and moderate-income manufactured homebuyers;

3. The proposed rule favors high-income purchasers and higher-cost homes at the expense of the very low, low and moderate-income manufactured homebuyers that Congress intended the Enterprises to properly serve through DTS;

4. The proposed rule, by excluding manufactured home chattel loans from DTS participation, will promote the continued domination of the manufactured housing consumer financing market by two large portfolio lenders affiliated with the industry's largest manufacturer and simultaneously discourage new lenders from entering the market, thereby restricting competition and needlessly forcing manufactured housing consumers into higher-cost chattel loans, contrary to the statutory mission of the Enterprises.

5. The proposed exclusion of chattel loans from DTS credit – contrary to specific congressional authorization -- is not based on independent empirical study or analysis of current chattel loan performance data by FHFA, but is premised instead on outdated, highly-restricted and skewed information selectively culled by FHFA to mirror its own pre-conceived biases and prejudices (and those of the Enterprises), regarding the manufactured housing consumer financing market;

6. The proposed rule, by excluding the vast majority of manufactured home purchasers from DTS, benefits the manufactured housing industry's competitors, which have aggressively opposed chattel participation in DTS, and effectively casts FHFA, contrary to the DTS reforms mandated by Congress, in the illegitimate role of choosing winners and losers in a market that is -- and continues to be – distorted by Enterprise policies that discriminate against manufactured home loans and consumers;

7. The discretionary manufactured housing chattel loan "pilot program" referenced by the proposed rule is completely inadequate as a substitute for full-fledged DTS credit for chattel loans on a going basis, and is little more than a distraction from FHFA's failure to include full chattel loan participation in DTS in accordance with the law;

8. The proposed rule has been irretrievably and fundamentally tainted by improper *ex parte* communications between FHFA and insiders with a direct financial interest in this rulemaking; and

9. The proposed rule is inconsistent with national housing policy as set forth in the Manufactured Housing Improvement Act of 2000.

The cumulative impact of all these crucial deficiencies will be to fatally undermine the value of the DTS mandate as a means of significantly increasing the Enterprises' participation in the manufactured housing market. The 2015 proposed rule – like the 2010 proposed rule before it – is a prescription for "more of the same" from the Enterprises. It ignores the dismal track record of the Enterprises in serving very low, low, and moderate-income purchasers (and potential purchasers) of manufactured homes and despite that track record, automatically excludes the 80% of the manufactured housing market represented by chattel loans, while leaving the Enterprises, effectively, to their own devices regarding future participation in the remaining 20% (or less) of the manufactured housing market. At the same time, it leaves in place – and essentially validates – the historical prejudices of the Enterprises that have left very low, low and moderate-income manufactured homebuyers without access (or with highly restricted access) to private sources of financing capital to purchase homes that they can actually afford. In doing so, moreover, it favors the industry's largest businesses and outside industry competitors, by failing to provide the type of large-scale secondary-market support that would attract more lenders to the manufactured housing market and promote the type of genuine and robust competition that would result in lower interest rates on manufactured home loans.

Given the fundamental flaws inherent in the 2015 proposed rule and the urgent need for significant, effective and expeditious reform of the Enterprises' role in relation to the manufactured housing consumer financing market, FHFA should withdraw and modify major aspects of its 2015 proposed DTS rule as addressed below – and most particularly its exclusion of chattel and other non-real estate loans – and adopt a final rule that fully implements DTS in accordance with clear congressional intent.

II. BACKGROUND

A. Discrimination Against Manufactured Home Lending in Violation Of The Enterprises' Statutory Mission Led to the DTS Mandate

Manufactured housing regulated by the U.S. Department of Housing and Urban Development is the nation's most affordable source of home ownership. A December 2004 HUD-sponsored study determined that over an eight-year sample period the mean monthly housing cost of consumer-owned manufactured homes was consistently and substantially less than the cost of

ownership for other types of homes or even the cost of renting a home.[6] Manufactured homes, moreover, are inherently affordable without costly taxpayer-funded subsidies, with an average structural price of $65,300 ($45.41 per square foot) as compared with an average structural cost (i.e., excluding land) of $261,172 ($97.10 per square foot) for a site-built home, as shown by 2014 U.S. Census Bureau data.[7]

Given this inherent affordability, the economic demographic of manufactured home owners and purchasers falls squarely within the Enterprises' core statutory mission of providing liquidity and stability for the American housing market and supporting affordable housing and home ownership for low and moderate-income families.[8] Specifically, the most recent statistics available show that 73% of all manufactured home households earn less than $40,000;[9] the median income of manufactured home households is $26,400;[10] and 45% of all manufactured home borrowers earned 80% or less of Area Median Income.

Yet the Enterprises have historically failed to provide any meaningful support for federally-regulated manufactured housing. At present (and historically since 2003) the Enterprises provide no securitization or secondary market support for manufactured home personal property loans and minimal or no support for manufactured home real estate loans.[11] As a result of this entrenched culture of institutional discrimination against manufactured homes and manufactured homebuyers, manufactured home loans comprise less than 1% of the Enterprises' total portfolios even though 22 million Americans currently live in manufactured homes and manufactured housing since 1989, has accounted for 21% of all new single-family homes sold in the United States.

This deviation from the Enterprises' core statutory mission, together with a corresponding expansion of the Enterprises' participation in the mortgage financing market for much higher-priced site-built homes, not only contributed to the Enterprises' failure in 2008, but has sharply curtailed the availability of private-sector purchase financing for manufactured homes, severely impacting both American consumers of affordable housing and the industry – comprised substantially of small, independent businesses.

At the consumer level, the lack of Enterprise securitization and secondary market support for manufactured housing loans and the resulting highly-constricted availability of manufactured home consumer financing at market-competitive rates, directly and needlessly excludes millions of very low and lower-income Americans from the only type of home ownership they can afford. Moreover, those who are not excluded from home ownership altogether are unnecessarily forced

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[6] 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).

[7] See, Attachment 2, hereto, U.S. Census Bureau, Cost and Size Comparison: New Manufactured Homes and Single-Family Site Built Homes (2007-2014).

[8] The Safety and Soundness Act further provides that the Enterprises "have an affirmative obligation to facilitate the financing of affordable housing for low and moderate-income families." See, 12 U.S.C. 4501(7). (Emphasis added).

[9] See, "2012 Manufactured Home Market Facts," Foremost Insurance Group, at p. 5.

[10] See, "Manufactured Housing Consumer Finance in the United States," U.S. Consumer Finance Protection Bureau (September 2014).

[11] Manufactured housing real estate loans since 2003 have been subject to significantly more restrictive criteria than site-built home mortgages, including punitive underwriting standards and discriminatory loan-level price adjustments, resulting in minimal support by the Enterprises.

into higher-cost loans because of the lack of robust competition in a market distorted by the Enterprises' discrimination against manufactured home loans and the resulting domination of that market by two lenders in particular with the ability to originate and maintain those loans in their own portfolios.

The calamitous individual and societal impact of this systemic, policy-driven exclusion is reflected in an April 2015 HUD report to Congress which shows that nearly eight million lower-income American households in 2013 either "paid more than half their monthly incomes for rent, [or] lived in severely substandard housing, or both" – nearly 50% more than the number of households experiencing such "worst case" housing needs in 2003.[12]

For the industry, since 1998, manufactured home production has fallen by more than 81% (from 373,143 homes to 70,544 homes in 2015), more than 62% of the industry's production facilities have closed, and the number of business entities producing manufactured homes has fallen by 48%. This has resulted in significant job losses with a devastating corresponding impact on job creation within the industry and allied businesses including product and component suppliers, retailers, transporters, installers, community owners and developers, insurers, financing providers and many more.

Congress, accordingly, recognizing the Enterprises' failure to fulfill their vital statutory mission with respect to manufactured housing and manufactured homebuyers, the resulting plight of consumers of affordable housing and the manufactured housing industry, and the need for an effective and robust remedy, included manufactured housing as an "underserved market" in the 2008 DTS mandate. FHFA, however, through its refusal to finally implement DTS for eight years and its continuing exclusion of chattel loans from DTS participation in both its 2010 and 2015 proposed rules, is not only maintaining, but extending and validating those Enterprise policies – repudiated by Congress through DTS -- that discriminate against manufactured housing and manufactured home purchasers.

Worse yet, by maintaining the effective exclusion of at least 80% of the manufactured housing finance market from DTS participation, FHFA has – and would continue to -- facilitate the domination[13] and alleged "monopolization"[14]of the manufactured housing consumer finance market by just two captive portfolio lenders affiliated with the industry's largest manufacturer (owned by Berkshire Hathaway, Inc.) and would enable those lenders to maintain higher-cost interest rates on new manufactured home loans – to the detriment of consumers and the broader industry -- due, in part, to a lack of free-market competition. By contrast, the full and proper implementation of DTS by the Enterprises and FHFA – as designed and intended by Congress -- would significantly alleviate the market constraints that currently translate into higher interest rates and restricted credit availability for manufactured housing loans and, by alleviating those risks,

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[12] See, "Worst Case Housing Needs; 2015 Report," U.S. Department of Housing and Urban Development, Office of Policy Development and Research (April 2015).

[13] Those two lenders (Vanderbilt and 21st Mortgage, see, note 4, supra), according to the 2016 Berkshire Hathaway annual shareholder letter, currently originate 35% of all manufactured home loans.

[14] See, American Banker, "Time to End the Monopoly Over Manufactured Housing," Doug Ryan, Corporation for Enterprise Development (February 23, 2016): "...thanks in part to low participation by Fannie Mae and Freddie Mac in the manufactured housing market ... borrowers of manufactured home loans must often turn to an uncompetitive market dominated by Clayton Homes, which does not have to rely on the secondary market for capital."

would encourage more lenders to enter (or re-enter) the manufactured housing market, thereby expanding competition and promoting greater consumer choice, while easing the market pressures driving higher interest rates.

B. Chattel Financing is Crucial to the Manufactured Housing Industry and American Consumers of Affordable Housing

The implementation of DTS proposed by FHFA in both its 2010 and 2015 NPRMs -- excluding manufactured chattel loans -- would be wholly inadequate. Chattel financing, long the only type of private-sector financing available for manufactured homes during their transition from the "trailers" of the post-war era to modern, legitimate housing, remains the lifeblood of the manufactured housing industry insofar as chattel financing provides lower-income consumers with access to the industry's most affordable homes. With U.S. Census Bureau data showing that chattel placements accounted for 80% of manufactured home placements in 2014 – an even greater share of the market than the 73% chattel placement rate at the time of the fundamentally deficient and unacceptable 2010 NPRM[15] -- it is evident that the availability of chattel financing, and expanding that availability, is not only vital to the survival and future growth of the manufactured housing industry, but also to the ability of the industry to meet the housing needs of Americans who otherwise would not have any access to homeownership.

The Enterprises, however, notwithstanding their statutory mission to provide home ownership support for lower and moderate-income Americans -- and the inherent ability of manufactured housing to provide those Americans with a home that they can afford without accounting chicanery, subsidies or exotic loan products -- have a long track record of hostility to manufactured housing in general and chattel-financed manufactured homes in particular. The Enterprises, therefore, not only provide no support for manufactured home chattel loans, but have aggressively resisted every effort to change their policies, including direct congressional intervention via DTS.[16]

With full knowledge of the devastating impact of their policies on both the industry and consumers of affordable housing, the Enterprises (supported by FHFA) cling to an outdated perception of manufactured housing, refusing to consider or even acknowledge the fact that today's manufactured home is a much superior product to years past, due to the maturing of the industry, innovative manufacturing techniques, competition with the site-built housing industry, the establishment of lending transparency and best practices, and the 2000 reform law that governs production, installation and dispute resolution. This outdated, negative perception, moreover, is fueled almost entirely by the negative experience of Fannie Mae in purchasing manufactured housing loans originated by one lender, Greentree Financial Corporation (Greentree), as is explained in greater detail in Section III, A.2 below. While refusing to acknowledge – or even mention in the 2015 NPRM (or the 2010 NPRM) -- Fannie Mae's own systemic failure in evaluating and purchasing loans from an originator on the verge of bankruptcy with default rates that were anomalous at the time, both FHFA and the Enterprises now seek to use the anomalous

[15] See, Attachment 2, U.S. Census Bureau Cost and Size Comparison (2007-2014), supra.

[16] Indeed, both Enterprises submitted comments in the 2010 DTS NPRM docket opposing DTS participation for manufactured home chattel loans.

performance of those loans as a benchmark and excuse for excluding all manufactured housing chattel loans from DTS.

Thus, FHFA, rather than leading the Enterprises away from the policies that brought about their failure in 2008 – i.e., advancing and providing securitization and secondary market support for large loans that consumers are unable to afford, instead of much smaller loans on inherently affordable HUD-regulated manufactured homes – through its wholly inadequate and unacceptable DTS implementation proposals is, in fact, validating and further entrenching the Enterprises' anti-manufactured housing and anti-chattel lending bias, directly contrary to both the letter and intent of DTS.

III. COMMENTS

Although presented as a "new" proposed DTS implementation rule[17], the 2015 proposed rule is indistinguishable from the FHFA 2010 proposed rule in one central and crucial respect – it maintains the blanket exclusion of manufactured housing chattel loans from DTS participation on a going basis contained in the 2010 proposed rule. Thus, while the December 18, 2015 preamble pays lip service to the eventual inclusion of manufactured home chattel loans in DTS, asking "Should the Enterprises receive credit for purchasing chattel loans on an ongoing or pilot basis?" and requesting "comments on what improvements could be made in originating and servicing that would make chattel loans safer for purchase by the Enterprises," the rule, as proposed, specifically and unequivocally excludes DTS participation for manufactured housing chattel loans on a going basis, stating: "As with the 2010 Duty to Serve proposed rule … this proposed rule would provide credit for Enterprise activities that facilitate a secondary market for manufactured homes titled as real property but not as chattel." (Emphasis added).

As grounds for this exclusion, the 2015 NPRM preamble resorts to the simple expedient of reiterating the "concerns" with manufactured housing chattel loans previously cited in the 2010 NPRM,[18] albeit with updated -- and almost universally anecdotal references -- apparently skimmed from internet sources. Indeed, at no point does it appear that FHFA has even attempted to conduct its own independent and statistically valid analysis of the performance of manufactured home chattel loans, let alone obtain (or even seek) the type of accurate and factual data from industry lenders that would enable such an analysis, contrary to its 2014 public commitment to "revisit" this "HERA obligation."[19]

Given FHFA's reiteration of the same flawed arguments from its 2010 proposed rule in support of its continuing proposed exclusion of manufactured housing chattel loans from DTS participation – and the continuing lack of any independent analysis of actual loan performance data for modern manufactured housing chattel loans post-dating the full implementation of the

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[17] See, 80 Federal Register, supra at p. 79183 specifically referring to the December 18, 2015 proposed rule as a "new proposed rule."

[18] See, 80 Federal Register, supra at p. 79188: "The Supplementary Information for the 2010 Duty to Serve proposed rule highlighted performance concerns about chattel lending and also discussed their high interest rates, disadvantageous loan features, and relative paucity of borrower protections. These concerns remain, and some bear reiteration." (Emphasis added).

[19] See, discussion at p. 3, supra.

manufactured housing installation and dispute resolution programs mandated by the Manufactured Housing Improvement Act of 2000 – MHARR hereby reiterates (with updates as warranted) its original 2010 objections to FHFA's continuing proposed exclusion of manufactured home chattel loans from DTS participation.

A. The Exclusion of Chattel and Land-Home Financing from DTS is Unwarranted and Undermines the Value of DTS for Consumers

The DTS provision of HERA (section 1129) states, in relevant part, that each "Enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low, low, and moderate-income families." (See, 12 U.S.C. 4565(a)) (Emphasis added). The same section further provides that "in determining whether an Enterprise has complied with" DTS, FHFA, as the Enterprises' regulator, "may consider loans secured by both real and personal property." (See, 12 U.S.C. 4565(d)(3)) (Emphasis added). FHFA has construed these provisions as granting it discretion as to whether or not homes financed as personal property, or as part of land-home packages (i.e., transactions other than conforming real estate loans), are included within DTS. Exercising this presumed discretion, the DTS rule proposed by FHFA excludes all non-real estate transactions. Without chattel and land-home transactions, however, DTS will not remedy the Enterprises' failure to serve the manufactured housing market and will not result in any material increase in the availability of private financing for very low, low and moderate-income purchasers of manufactured housing as directed by Congress.

1. The Exclusion of Chattel and Non-Real Estate Loans Will Render DTS Virtually Meaningless Contrary to HERA and Congress' Intent

U.S. Census Bureau data shows that manufactured homes titled and financed as personal property currently constitute approximately 80 percent of the entire manufactured housing market. With the inclusion of land-home packages, the proportion of new manufactured homes financed other than as conforming real estate transactions constitutes the vast majority of the market for new manufactured homes. Yet both categories are excluded from DTS, automatically limiting DTS to perhaps no more than 10 percent of the manufactured housing market. When homes purchased through public-based financing mechanisms, such as Veterans Administration (VA) and Federal Housing Administration (FHA)-insured loans are subtracted from the remaining portion of the market, that figure drops even lower, and other limitations cited by FHFA will restrict that number even further.[20] Very simply, DTS cannot be successful in meeting Congress' objective of materially increasing the Enterprises' support for manufactured home ownership when the vast majority of manufactured homes and manufactured home transactions are not even eligible for consideration under any conceivable "plan" that could be approved by FHFA under the 2015 proposed rule.

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[20] See, e.g., 80 Federal Register, supra at p. 79190, regarding the DTS ineligibility of Home Ownership and Equity Protection Act (HOEPA) mortgages.

Nor does one have to be clairvoyant to anticipate such a result. As FHFA acknowledged in its 2010 preamble, "the fact that the majority of manufactured home loans were not financed as real property helps to explain why manufactured home loans constitute a small share of the Enterprises' business."[21] By the same logic, limiting DTS to homes financed as real estate-only will ensure that the participation of the Enterprises in the manufactured housing market remains negligible.

Thus, for example, in 2004, the Enterprises purchased 15% of all manufactured home loans. In 2005, Enterprise purchases fell to 13.3 percent of all manufactured home loans. Extrapolated to 2015 production levels, Enterprise purchases at these levels (even if they remained constant) would involve less than 9400 manufactured homes nationwide. But, with DTS limited to homes titled as real estate only, even a minor improvement in Enterprise securitization and secondary market support is unlikely, as is demonstrated by the failure of Fannie Mae's MH Select initiative, which offers preferable underwriting treatment for permanently-sited manufactured homes with certain upgraded amenities. This program, though well-intended, remains virtually un-utilized and has had no impact in increasing the availability of private manufactured housing financing for anyone. Consequently, limiting DTS to real estate transactions is a certain prescription for the failure of DTS and violates the express command of DTS to develop new programs to facilitate a secondary market for manufactured housing obligations.

Manufactured homes can be financed as personal property without the homeowner purchasing -- or having an ownership interest in -- the land upon which the home is sited. This includes most manufactured home communities and other situations where site space is rented, or is otherwise owned by a third-party. The amount financed is limited to the home itself which, according to U.S. Census Bureau data, in 2014, averaged $40.36 per square foot (PSF) for a single-section manufactured home and $47.95 PSF for a double-section manufactured home. Obviously, adding the cost of land to that of the home structure, in order to qualify as a conforming real estate transaction, substantially increases the loan amount paid by the purchaser. This will eliminate purchasers at the lower end of the income spectrum and skew DTS toward higher-cost homes and higher-income purchasers. Moreover, single-section manufactured homes that are financed as personal property more often than multi-section manufactured homes, particularly within communities, are the industry's most affordable products, with an average 2014 (structure only) sales price of $45,000, as contrasted with $82,000 for a multi-section home.[22]

Consequently, DTS, as conceived by FHFA, would provide only marginal benefits for a highly-limited and insignificant number of the most highly-qualified, higher-income manufactured home purchasers, while excluding the vast majority of manufactured home purchasers and potential purchasers, leaving lower-income families no better-off than they are now, with – effectively -- no support from the Enterprises.

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[21] See, 75 Federal Register, No. 108, at 32103.

[22] See, Attachment 2, supra.

2. There is No Valid Basis for the Exclusion of Manufactured Housing Chattel and Non-Real Estate Loans from DTS

FHFA, in its proposed rule, devotes more time and effort to rationalizing the exclusion of the vast majority of manufactured home loans from DTS than it does to establishing the contours of new DTS programs that would actually be effective and beneficial in carrying out Congress' mandate. These asserted rationalizations, largely carried-over and "reiterated" from the FHFA 2010 DTS NPRM, can be summarized as follows: (a) "In Fannie Mae's limited experience with chattel loans, they performed poorly;" (b) "The chattel transactions revealed high levels of inconsistency in the quality and standardization of loan documentation;" (c) "The [chattel] transactions had much higher default rates and loss severities;" (d) "Chattel loans have had higher interest rates ... on average than ... mortgages on manufactured homes;" (e) "Chattel loans ... lack the benefit of many federal laws and programs that assist real estate-titled borrowers;" and (f) "The risks posed to secondary market investors by bankrupt chattel borrowers are greater than the risks posed by bankrupt real property borrowers." Each of these rationalizations is addressed -- and refuted – below.

(a) "Limited" Experience – "Poor Performance"

In reality, the Enterprises have virtually no experience with manufactured chattel loans on a going basis. Rather, the "limited" Fannie Mae experience with such loans, cited by FHFA, stems almost entirely from its purchase of manufactured housing loans originated Greentree Financial Corporation (Greentree) in the late 1990s and early 2000s[23] in order to comply with the then-applicable Enterprise Affordable Housing Goals.[24] Had Fannie Mae exercised proper due diligence at that time, it would have been aware that the Greentree portfolio had a history of lax and inadequate underwriting and that Greentree itself was on the verge of bankruptcy.[25] The performance of the Greentree portfolio, however, is not typical or representative of the performance of other manufactured home chattel loans and especially the performance of modern, post-2000 reform law manufactured home loans.[26] Such loans – when properly underwritten and managed – have generated significant profits for existing industry lenders[27]and can provide the

[23] By 2002, Greentree-originated manufactured housing loans constituted 70% of Fannie Mae's manufactured housing balances. See, "Manufactured Housing Consumer Finance in the United States," U.S. Consumer Finance Protection Bureau (September 2014), supra at p. 28, note 55 and related text.

[24] Id. at p. 28, note 53 and related text.

[25] Id. at p. 28, noting that Greentree merged with Conseco, Inc. (Conseco) in 1998 and that the merged entity filed for bankruptcy in 2002.

[26] Indeed manufactured housing loans originated during this period (late-1990s to early-2000s) significantly under-performed as compared with manufactured housing loans originated just a few years earlier (and prior to the implementation of the enhanced consumer protection mechanisms of the Manufactured Housing Improvement Act of 2000). Thus, there were more than 75,000 manufactured home repossessions in 2000, as compared with an annual average of 20,000 repossessions in earlier years – an anomalous 275% increase. See, "Manufactured Housing Consumer Finance in the United States," U.S. Consumer Finance Protection Bureau (September 2014), supra at p. 28, note 51 and related text.

[27] The 2016 Berkshire Hathaway Shareholder Letter states that the industry's two largest lenders, Vanderbilt and 21st Mortgage – both Berkshire Hathaway subsidiaries – currently hold and manage a $12.8 billion manufactured home loan portfolio. Those entities experienced a foreclosure rate of 2.64% in 2015, only marginally higher than the 1.77% of loans in foreclosure for the broader housing market at the end of the third quarter of 2015. See, "Mortgage

basis for profitable participation by the Enterprises as explained in the White Paper, entitled "Application of the Duty to Serve Underserved Markets Provision of the Housing and Economic Recovery Act of 2008, submitted in conjunction with MHARR's comments on the 2010 NPRM.

Rather than acknowledging – or even mentioning -- the anomalous, non-representative performance of these loans, or the failure of the Enterprises to properly and responsibly evaluate either the loans, the underwriting standards pursuant to which they were originated, or the financial condition of their originator, FHFA attempts to use the performance of those loans as evidence of the quality and performance of current-day manufactured home chattel loans. Any such comparison – by itself --would be invalid and illegitimate, like evaluating the Enterprises today based on the default rates and severity levels that occurred in the broader housing market between 2006 and 2008, when the market was decimated by the credit crisis and loss severity rates at Freddie Mac topped-out at 46.1%.[28] Indeed, even offering the performance of the Greentree loans as evidence of the broader performance of today's manufactured home chattel loans, without the full disclosure of all relevant facts and information is affirmatively misleading and disingenuous.

(b) Inconsistency in Quality and Standardization of Loan Documentation

Like point (a) above, this observation stems from Fannie Mae's limited experience with loans originated by Greentree, and should not simply be assumed by FHFA – as is the case here -- to be either typical or representative of the quality of loan documentation held by existing lenders, or the requirements for documentation quality that could be included, going forward, in a proper DTS implementation rule addressing both real estate and chattel manufactured home loans.

(c) Higher Default Rates and Loss Severities

Like points (a) and (b) above, this observation stems from Fannie Mae's limited experience with loans originated by Greentree, and should not simply be assumed by FHFA – as is the case here – to be either typical or representative of the performance of manufactured home chattel loans originated and held in portfolio by existing lenders (or future lenders). Indeed, public information regarding the performance of manufactured housing loans currently held in portfolio by the nation's two dominant manufactured housing lenders, indicates 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[29] -- for large numbers of borrowers with incomes significantly higher than most manufactured home purchasers. Moreover, the same lenders reported 8,444 foreclosures/repossessions in 2015, at an average loss of $18,593 per home[30], or a loss severity of 28.47%, based on a 2014 average sales price of $65,300 for all types

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Foreclosures and Delinquencies Continue to Drop," Mortgage Bankers Association, February 18, 2016. That 2.64% rate, moreover, pertains to loans provided to the mostly lower and-moderate income consumers who rely on affordable manufactured housing, with 73% of manufactured home owners having an annual household income of less than $40,000.00. See, "2012 Manufactured Home Market Facts," Foremost Insurance Group, supra at p. 5.

[28] See, "Loss Severity on Residential Mortgages: Evidence from Freddie Mac's Newest Data," Urban Institute (February 2, 2015) at Table 4 and related text.

[29] See, note 27, supra.

[30] See, 2016 Berkshire Hathaway Shareholder Letter at 18.

of manufactured homes.[31] 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.[32]

(d) Higher Chattel Interest Rates

The 2015 NPRM, citing a 2014 report by the Consumer Finance Protection Bureau (CFPB), states that Annual Percentage Rates (APR) on manufactured home "chattel loans have had higher interest rates ... on average than ... mortgages on manufactured homes," while noting that manufactured home real-estate mortgages purchased by Freddie Mac have performed "within ... expectations."[33] To blame relatively higher interest rates for manufactured home chattel loans, as compared with manufactured home real estate loans, or real estate loans within the broader housing market – in the absence of any Enterprise securitization or secondary market support -- is akin to blaming the victim for the commission of a crime.

Manufactured housing lenders have repeatedly explained in public testimony before Congress, that higher interest rates on manufactured housing loans (and particularly chattel loans) are unavoidable in the absence of any meaningful Enterprise secondary market support or securitization. Thus, in November 2011 testimony before a House of Representatives subcommittee, the President of Clayton Homes, Inc. stated, in relevant part: "... 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...."[34] To now deny manufactured home chattel loans that type of going secondary market and securitization support based on the comparatively higher-cost interest for such loans would not only be a self-fulfilling prophecy and a de facto FHFA rejection of policy decisions made by Congress, but would be fundamentally disingenuous as well.

In addition, while manufactured home chattel loans generally do carry higher-cost interest rates than comparable real estate mortgages, personal property financing may be the only method available to qualify a consumer to purchase a manufactured home that they can afford. In many instances, low and lower-income purchasers can afford the home itself, but cannot afford to purchase the land upon which it is sited. For these consumers, chattel financing may be the only homeownership option available. Excluding chattel financing from DTS would effectively exclude these lower-income purchasers -- the very consumers that the Enterprises are tasked with serving under their respective Charters and DTS -- from the manufactured housing market and the only form of home-ownership that they can afford.

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[31] See, Attachment 2, U.S. Census Bureau Cost and Size Comparison (2007-2014), supra.

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

[33] See, 80 Federal Register, supra at p. 79188 and note 36.

[34] 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.

Quite simply, manufactured home chattel loan interest rates are higher-cost as compared with other types of home loans because of the absence of Enterprise securitization and secondary market support which distorts the manufactured home finance market and limits competition. For consumers to be forced into such higher-cost loans is bad enough. For FHFA to attempt to use those rates as an excuse for excluding chattel loans from DTS participation is not only disingenuous but an outrageous insult to those consumers and the industry.

(e) Chattel Non-Inclusion in Federal Consumer Programs

The 2015 NPRM notes that "chattel loans also lack the benefit of many federal laws and programs that assist real estate-titled borrowers." The short answer to this assertion is that Congress was undoubtedly aware (and is presumed to have been aware under relevant judicial authority) of this, yet chose to authorize the inclusion of manufactured home chattel loans in DTS in any event. Again, this is a policy choice made by – and within the exclusive domain of – Congress, that FHFA is not free to reject or override as a rationalization for excluding chattel loans from DTS participation.

As MHARR noted in its comments on the 2010 NPRM, "the exclusion of chattel and other non-real estate loans from DTS based on the alleged need for new or additional 'consumer protection' requirements is baseless. There is nothing in the DTS mandate to indicate that it is to be subordinated to 'consumer protection' issues or other policies unrelated to the objective of increasing the availability of private financing for manufactured housing. Nothing in DTS authorizes or even hints that FHFA is to act as a consumer protection agency in relation to manufactured home loans, or is authorized to require the development of such requirements by the Enterprises as a condition of the full implementation of the DTS. Thus, ANPR comments by certain groups calling for "RESPA-like protections" for chattel loans, or objecting to chattel loans based on potential self-help repossession (which is governed, in any event, by state law) are extraneous to DTS and to the function and authority of FHFA and the Enterprises and should not be an issue or factor in the implementation of the DTS mandate. Indeed, FHFA concedes as much in its preamble, stating that the development of "such protections may require legislative and regulatory changes beyond the scope of the duty to serve" (emphasis added) (see, 75 Federal Register, No. 108 at 32104), yet it relies on these arguments to exclude chattel financing from DTS."

(f) Greater Risk to Investors from Bankrupt Borrowers

Finally, among its rationalizations for the exclusion of manufactured home chattel loans from DTS participation, FHFA states: "The risks posed to secondary market investors by bankrupt chattel borrowers are greater than the risks posed by bankrupt real property borrowers."[35] While there are, in fact, legal differences in the treatment of real estate and chattel loans, and their related security interests, this is a free market issue that can be readily addressed through appropriate underwriting and pricing standards to reflect and account for risk variations between the different

[35] See, 80 Federal Register, supra at p. 79189 and note 43.

types of loans. As such it is not a legitimate basis for the exclusion of manufactured home chattel loans from DTS participation.

Beyond these specific points raised by FHFA, both the 2010 NPRM and the 2015 NPRM effectively seek to punish the manufactured housing industry and manufactured housing consumers for the 2008 failure of Fannie Mae and Freddie Mac, and their subsequent conservatorship under the auspices of FHFA. There is no legitimate comparison, however, between manufactured home loans and much larger loans for site-built homes in terms of the safety and soundness of the Enterprises during the past decade and going forward with the full implementation of DTS, including manufactured home chattel loans.

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, manifestly, 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 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).[36] 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),[37] FHFA still refuses to allow the Enterprises to provide 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, 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.

B. A Discretionary "Pilot Program" for Manufactured Home Chattel Loans Would be Wholly Inadequate and Would Not Satisfy the DTS Directive

In a departure from the 2010 proposed DTS implementation rule, FHFA states in the 2015 NPRM that: "The Enterprises could pilot an initiative to purchase chattel loans, which could familiarize them with the risk and rewards of chattel financing and familiarize their counterparties with the types of origination, servicing, and consumer protection standards that would be required for any permanent chattel financing initiative."[38] The NPRM, however, immediately undermines this suggestion, stating: "Given the considerable challenges and considerable investment an Enterprise chattel pilot would entail, the overall benefits of a pilot program may be uncertain." (Emphasis added).[39] Regardless, though, a chattel loan Pilot Program of the type described by FHFA would be grossly inadequate to satisfy either the letter or intent of the statutory DTS mandate.

First, the "Pilot Program" described by FHFA (as confirmed by FHFA) would be discretionary with the Enterprises and not mandatory in any aspect. Given the Enterprises' historical and intense opposition to any securitization or secondary market support for manufactured housing loans, there is absolutely no reason to believe or expect that either entity would establish such a program. Indeed, providing the Enterprises with a de facto veto over the establishment of any such program would indicate that the proposal is neither serious or legitimate, and is little more than a smokescreen devised to divert attention from the continuing exclusion of

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

[37] See, attachment 2, supra.

[38] See, 80 Federal Register, supra at p. 79189. FHFA, during a December 18, 2015 "webinar" for DTS stakeholders, confirmed that any such DTS "pilot" chattel program would be discretionary for the Enterprises, meaning that the implementation of such a program would rest with Enterprise decision-makers who have consistently rejected any support for manufactured housing loan chattel loans, as reflected in the comments they submitted in response to the 2010 NPRM.

[39] Id. at p. 79190.

chattel loans from full participation in DTS based on non-existent, non-representative, or tainted evidence, and/or insider ex parte communications as addressed below.

Second, DTS, as noted above, was designed, in part, as a remedy for the long-term failure of the Enterprises to properly serve the manufactured housing market (among others) and the predominantly low, lower and moderate-income Americans who rely on HUD-regulated manufactured homes for inherently affordable home ownership. Nothing in either HERA or the legislative record of that statute indicates that DTS was designed or intended by Congress to be either symbolic, or a long-term exercise in incrementalism or tokenism. It was designed, rather, to be an effective remedy now for American consumers who have been excluded far too long already from the benefits of home ownership – or have been forced unnecessarily to pay higher-cost interest rates in a less-than-fully-competitive manufactured housing finance market – as a result of the lack of secondary market and securitization support for all types of manufactured housing loans from the Enterprises.[40]

By mandating greater participation by the Enterprises in the manufactured housing market, DTS is, effectively, the finance counterpart to the national housing policies enunciated by Congress in the Manufactured Housing Improvement Act of 2000. Congress stated in that law that one of its major purposes is to "facilitate the availability of affordable manufactured homes and to increase home ownership for all Americans."[41] The promise of affordable, non-subsidized manufactured housing for American families, however, is meaningless if the financing necessary to purchase a manufactured home is either unavailable, or needlessly restricted. Consequently, DTS must be read in conjunction with the objectives of Congress in the 2000 reform law -- and implemented in a manner consistent with that law -- to facilitate and increase the availability of manufactured housing for all Americans and particularly for very low, low and moderate-income families.

DTS, accordingly, was not adopted to cure Enterprise discrimination against manufactured housing consumers (and particularly chattel borrowers) at some dim, distant point in the future. It was designed to be a materially effective remedy right away. Thus, while a chattel loan "Pilot Program" could be beneficial in the short-term as a very brief precursor to the full DTS participation of manufactured housing chattel loans at a finite and mandatory date-certain no more than 12 months following the publication of a final DTS implementation rule, an open-ended, discretionary pilot program would not be an adequate or acceptable substitute for full chattel DTS participation as prescribed in a final DTS implementation rule and, as such is opposed by MHARR.[42] FHFA and the Enterprises have already wasted eight years since the enactment of HERA, during which time the manufactured housing industry has experienced only a slow and limited recovery from an historic production low in 2009. Both the industry and consumers who have suffered under discriminatory anti-manufactured housing policies at the hands of the Enterprises need, deserve and demand full and proper relief now, in accordance with Congress' directive.

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[40] See, further discussion of this point in Section III C, infra.

[41] See, 42 U.S.C. 5401(b)(2).

[42] MHARR would note again that a similar "Pilot Program," the "MH Select" program offered by Fannie Mae beginning in 2008 was subject to so many excessive, unrealistic and debilitating terms and conditions that it has gone virtually unused.

C. The Rulemaking Process has been Irretrievably and Fundamentally Tainted By Improper Ex Parte Contacts and Communications with Parties in Interest

As is noted and detailed in Section I, above, MHARR learned in July 2015 that closed-door discussions (subsequently acknowledged by FHFA personnel) regarding DTS had taken place between FHFA officials and parties in interest in the then-still-pending 2010 DTS rulemaking -- including the Manufactured Housing Institute (MHI) and an ostensible "consumer" group -- prior to publication of the 2015 NPRM. MHARR strenuously objected to such closed discussions and advised FHFA verbally on July 9, 2015 and on July 10, 2015 in a written communication: (1) that any such post-2010 NPRM (and post-2010 NPRM comment period) "discussions" with parties in interest regarding a still-pending rulemaking constituted suspect – and potentially impermissible -- *ex parte* communications; (2) that applicable federal law and policy required that the content of any such *ex parte* communications be publicly disclosed; and (3) that MHARR expected FHFA to notify MHARR of its receipt of any written proposals or materials from any such party (or parties), so that MHARR, on behalf of its members, would have an opportunity to submit its own document(s) regarding DTS, to provide FHFA, at a meaningful time and in a meaningful manner, the distinct perspectives, views and interests of smaller industry businesses regarding the absolute necessity of chattel loan securitization as a component of DTS.

FHFA, while verbally acknowledging such "discussions," has not provided any disclosure of the content, subject matter or substance of those "discussions." Nor does the 2015 NPRM disclose those discussions or expressly indicate if – and if so how – those admitted closed-door discussions impacted the substance of the "new" proposed rule.

Recommendation 2014-4 of the Administrative Conference of the United States (ACUS) (June 6, 2014), addresses the dangers presented by agency ex parte communications with persons in interest in a rulemaking: "[A] concern is that agency decision-makers may be influenced by information that is not in the public rulemaking docket. The mere possibility of non-public information affecting rulemaking ... undermines confidence in the rulemaking process. When it becomes reality, it creates different and more serious problems. Interested persons may be deprived of the opportunity to vet the information and to reply to it effectively. And reviewing courts may be deprived of information that is necessary to fully and meaningfully evaluate the agency's final action."

The ACUS report accompanying Recommendation 2014-4,[43] following an exhaustive review of District of Columbia Federal Circuit Court of Appeals decisions involving agency ex parte communications relating to informal rulemaking under the Administrative Procedure Act (APA) states, in relevant part:

> "The disclosure of post-NPRM ex parte communications on which an agency relies or that otherwise affect rulemaking must provide enough information to satisfy the APA's requirement of a 'concise general statement of their [...rules'] basis and purpose' and facilitate judicial review. An agency should take care to disclose in its statement of basis and purpose the substance of ex parte communications that

[43] See, "Ex Parte Communications in Informal Rulemaking," Administrative Conference of the United States (May 1, 2014).

> underpin the agency's decisions. Agencies should also take care to disclose all ex parte communications that could prevent judicial review of a full administrative record. One of the criticisms of disclosure decisions is that neither a judge nor the public knows what information is contained in undisclosed ex parte communications."[44]

In this matter, there were post-2010 NPRM ex parte communications between FHFA officials and parties with a direct interest in the content of a final DTS rule. Such communications, when they occurred, took place after the 2010 NPRM comment period had closed, but before the termination of that docket and before the publication of a final rule. While FHFA could attempt to maintain that the publication of a "new" proposed rule – the 2015 NPRM – would vitiate any concerns or APA violations relating to such undisclosed ex parte communications, any such contention would be factually and legally baseless.

One of the known participants in the 2015 closed discussions with FHFA – the Manufactured Housing Institute – has members which are manufactured housing finance providers, including the industry's two dominant finance providers, Vanderbilt and 21st.[45] Those two entities, in particular, have a direct and substantial interest in DTS and its inclusion or non-inclusion of manufactured home chattel loans on a going basis, because the current and historical lack of Enterprise securitization and secondary market support for manufactured housing loans in general – and chattel loans in particular – has been (and is) part of their justification for higher-cost interest rates on manufactured housing loans than are the norm for other types of home loans.

Thus, 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...."[46] Similarly, a 2011 MHI Issue Brief states: "... since our cost of capital is higher, manufactured home loan interest rates are typically higher. Since Fannie Mae and Freddie Mac do not purchase loans or create a secondary market where manufactured housing lenders can access capital at a discounted rate, lenders need to rely on other sources to make loans. These sources charge a higher interest."

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

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[44] Id. at p. 76.

[45] According to the 2016 Berkshire Hathaway Shareholder Letter, Vanderbilt and 21st – in 2015 -- originated 35% of all manufactured housing consumer loans, while their corporate parent, Clayton Homes, Inc. produced and sold 45% of all manufactured homes purchased in the United States. Id. at p. 17.

[46] See, note 34, supra.

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, 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 meaningful way, this either eliminates or severely limits the ability of smaller lenders to enter the manufactured housing market."[47]

An influx of competition, however, triggered by the full implementation of DTS, combined with a corresponding market-based softening of interest rates, could negatively impact the profitability of current higher-cost portfolio lenders according to published statements.[48]

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.

Absent a full public disclosure of all the ex parte communications between FHFA and those lenders (and/or their representatives) there is no way for other interested parties who were not privy to those communications, or members of the public, or, most importantly, a reviewing court, to know if FHFA would have acted differently but for such ex parte communications including, specifically, whether FHFA, in "re-visiting" its 2010 proposed rule, would have included full chattel loan participation in its 2015 proposed DTS rule but for such communications. Indeed, the prospect exists and, in fact, is quite likely that, absent full and complete disclosure now, such communications could have had – and could continue to have – a major impact on the 2015 DTS proposed rule and any ultimate final rule without the public or a reviewing court ever knowing

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[47] 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.

[48] As reported by media sources on April 3, 2015, the President of 21st Mortgage Company (and current MHI Chairman) stated, regarding Clayton Homes and its financial subsidiaries, that: "The Company is profitable in all it does," but financial products are "where the money is made." See, Center for Public Integrity, "Warren Buffet's Mobile Home Empire Preys on the Poor," April 3, 2015.

either their content or their specific impact, all to the extreme and irreparable detriment of other affected stakeholders.

Consequently, FHFA should immediately disclose all information concerning the occurrence of those closed discussions and all participants in those discussions, and should publicly release all materials, documents, records and/or transcripts relating to these meetings, as well as their relevance and relationship to specific decisions by FHFA with respect to the content of the 2015 proposed DTS implementation rule and 2015 NPRM. Absent such full transparency, the 2015 proposed rule is – and will remain – fundamentally and irretrievably tainted.

IV. CONCLUSION

For all of the foregoing reasons, including, most importantly, the proposed rule's exclusion of manufactured housing chattel loans from DTS participation and the unknown influence of irregular ex parte contacts and communications between FHFA officials and selected insiders on the 2015 proposed rule, FHFA should: (1) publicly release all materials, records, documents and transcripts (if any) related to and disclosing the content of any such ex parte communications; (2) withdraw the 2015 proposed rule and re-issue an amended proposed rule including full DTS participation for manufactured home chattel loans and land-home loan packages as well as real estate loans; or (3) issue a final rule in the pending 2015 NPRM including full DTS participation for manufactured home chattel loans and land-home loan packages as well as real estate loans, together with other modifications of the 2015 proposed rule as set forth herein.[49]

Very truly yours,

Mark Weiss
President & CEO

cc: Hon. Richard Shelby, Chairman, Senate Banking, Housing and Urban Affairs Committee
Hon. Sherrod Brown, Ranking Member, Senate Banking. Housing and Urban Affairs Committee
Hon. Jeb Hensarling, Chairman, House Financial Services Committee
Hon. Maxine Waters, Ranking Member, House Financial Services Committee
Mr. Melvin Watt, Director, Federal Housing Finance Agency
Mr. Shaun Donovan, Director, Office of Management and Budget

[49] While MHARR's membership does not include manufactured housing communities, with respect to questions posed in the 2015 NPRM specifically addressing manufactured housing communities and other issues specifically relating to manufactured housing communities, MHARR concurs with the comments previously filed in the 2015 NPRM docket on behalf of the Manufactured Housing Communities of Arizona (MHCA).

ATTACHMENT 1

Subj: **Re: Duty to Serve -- Manufactured Housing**
Date: 7/10/2015 2:15:27 P.M. Eastern Standard Time
From: Mmarkweiss@aol.com
To: Michael.Price@fhfa.gov
CC: dannyghorbani@aol.com, Jim.Gray@fhfa.gov

Mike:

Just to summarize our conversation yesterday (July 9, 2015) regarding the duty to serve (DTS) and the concerns expressed in my below email to you; you and Mr. Gray stated that there was/is no such working group or task force involving FHFA, MHI and other groups regarding DTS. You further indicated that FHFA is working on an amended proposed rule which is currently targeted for publication later this year, possibly in September.

Near the end of our discussion, despite such disavowals, Mr. Gray (surprisingly) stated that it was possible that something could "come in over the transom" from MHI or others on Monday (July 13, 2015), whereupon I stated that any such submission should and must be publicly disclosed by FHFA as an ex parte, post-NPRM submission given the pending August 4, 2009 DTS NPRM.

If the foregoing does not accurately reflect the substance of our conversation, please advise me (with specific relevant details) as soon as possible.

Beyond our discussion yesterday, we wish to go on record requesting that if FHFA does, in fact, receive any such submission from MHI and/or other parties in interest (regardless of when received), that FHFA notify MHARR of that fact and disclose the said document(s), so that MHARR can submit its own document(s) regarding the same, to provide, at a meaningful time and in a meaningful manner, the distinct perspectives, views and interests of smaller industry businesses represented by MHARR and not MHI -- particularly regarding the absolute necessity of chattel loan securitization pursuant to DTS.

Thank you again for our conversation yesterday.

Mark Weiss
President & CEO
Manufactured Housing Association for Regulatory Reform (MHARR)
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Phone: 202/783-4087
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Email: MHARRDG@AOL.COM

ATTACHMENT 2

Cost & Size Comparisons: New Manufactured Homes and New Single-Family Site-Built Homes (2007 - 2014)

	2007	2008	2009	2010	2011	2012	2013	2014[1]
New Manufactured Homes								
All								
Avg. Sales Price	$ 65,400	$ 64,700	$ 63,100	$ 62,800	$ 60,500	$ 62,200	$ 64,000	$ 65,300
Avg. Square Feet	1,600	1,565	1,530	1,520	1,465	1,480	1,470	1,438
Avg. Cost per Sq. Ft.	$ 40.88	$ 41.34	$ 41.24	$ 41.32	$ 41.30	$ 42.02	$ 43.54	$ 45.41
Single								
Avg. Sales Price	$ 37,300	$ 38,000	$ 39,600	$ 39,500	$ 40,600	$ 41,100	$ 42,200	$ 45,000
Avg. Square Feet	1,100	1,100	1,120	1,110	1,115	1,100	1,100	1,115
Avg. Cost per Sq. Ft.	$ 33.91	$ 34.55	$ 35.35	$ 35.59	$ 36.41	$ 37.36	$ 38.36	$ 40.36
Double								
Avg. Sales Price	$ 74,200	$ 75,800	$ 74,500	$ 74,500	$ 73,900	$ 75,700	$ 78,600	$ 82,000
Avg. Square Feet	1,775	1,765	1,735	1,730	1,705	1,725	1,720	1,710
Avg. Cost per Sq. Ft.	$ 41.80	$ 42.95	$ 42.94	$ 43.06	$ 43.34	$ 43.88	$ 45.70	$ 47.95
Housing Starts vs. MH Shipments *(Thousands of units)*								
New Single Family								
Housing Starts	1,046	622	445	471	431	535	618	648
Percent of Total	92%	88%	90%	90%	89%	91%	91%	91%
Manufactured Home Shipments								
Shipped	96	82	50	50	52	55	60	64
Percent of Total	8%	12%	10%	10%	11%	9%	9%	9%
Total	1,142	704	495	521	483	590	678	678
New Single-Family								
Site-Built Homes Sold (Home and Land Sold as Package)								
Avg. Sales Price	$ 313,600	$ 292,600	$ 270,900	$ 272,900	$ 267,900	$ 292,200	$ 324,500	$ 345,800
Derived Average Land Price	$ 84,268	$ 74,209	$ 67,718	$ 66,340	$ 59,950	$ 69,115	$ 75,071	$ 84,628
Price of Structure								
Avg. Square Feet	2,479	2,473	2,422	2,457	2,494	2,585	2,662	2,690
Avg. Price per Sq Ft. (excl. land)	$ 92.51	$ 88.31	$ 83.89	$ 84.07	$ 83.38	$ 86.30	$ 93.70	$ 97.10
Manufactured Home Shipments								
Total	95,752	81,907	49,717	50,046	51,618	54,881	60,228	64,331
Single-Section	30,737	30,384	18,568	20,373	25,291	25,629	28,239	30,218
Multi-Section	65,015	51,523	31,149	29,673	26,237	29,252	31,989	34,113
New Manufactured Homes Placed *(for Residential Use)*								
Located in Communities	26%	26%	22%	25%	26%	29%	30%	33%
Located on Private Property	74%	74%	78%	75%	74%	71%	70%	67%
Titled as Personal Property	64%	62%	67%	73%	75%	77%	78%	80%
Titled as Real Estate	28%	28%	28%	21%	17%	15%	14%	13%

1 Data from 2013 and prior are not comparable to 2014 data.

Source: These data are produced by the U.S. Commerce Department's Census Bureau from a survey sponsored by the U.S. Department of Housing and Urban Development.

Manufactured Housing Association for Regulatory Reform

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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.

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[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

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[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.

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[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.

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[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