Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW · Suite 508 · Washington, DC 20004 · 202-783-4087 · Fax 202-783-4075 · mharrdg@aol.com

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Alfred M. Pollard, Esq.
General Counsel
Attn. Comments/RIN 2590-AA49
Federal Housing Finance Agency
Eighth Floor
400 7th Street, S.W.
Washington, D.C. 20024

Re: 2012-2014 Enterprise Affordable Housing Goals

Dear Mr. Pollard:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based 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.

I. INTRODUCTION

On June 11, 2012, the Federal Housing Finance Agency (FHFA) published a proposed rule to establish 2012-2014 Enterprise Affordable Housing Goals for the two Government Sponsored Enterprises (GSEs) – Fannie Mae and Freddie Mac -- currently operating under FHFA conservatorship. The proposed rule would have two primary impacts relevant to the manufactured housing industry and consumers of affordable manufactured homes: (1) it would continue the exclusion of manufactured home personal property (chattel) loans from the amended regulatory definition of "mortgage" first adopted by the Final Rule establishing Enterprise Affordable Housing Goals for 2010-2011 (see, 75 Federal Register, September 14, 2012 at p. 55892, et seq.), thereby continuing to exclude such loans from credit under any of the Enterprise Affordable Housing Goals (AHG); and (2) would significantly lower the two single-family affordable housing goals – for low-income families and very low-income families – from the already substantially reduced levels established by FHFA for 2010 and 2011.

For the reasons set forth and explained in greater detail below, MHARR opposes both of these changes and urges FHFA to adopt a final rule that restores full AHG credit for all types of manufactured home loans, authorizes the GSEs to engage in the systematic securitization and/or purchase (S/P) of manufactured housing personal property loans for AHG credit, and also maintains or increases the single-family low-income and very low-income benchmark levels previously established for 2010-2011.

II. COMMENTS

A. Background

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

Personal property or "chattel" financing, long the only type of private-sector financing available for manufactured homes during their evolution from the pseudo-"trailers" of the Cold War era to the modern, legitimate housing of today, remains the lifeblood of the manufactured housing industry. The reason is simple -- chattel financing provides access for lower-income consumers to the industry's most affordable homes. 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, reducing the cost of manufactured home ownership to a fraction of the cost of a site-built home. This includes most manufactured home communities and other situations where site space is rented, or is otherwise owned by a third-party.

With chattel financing today accounting for over three-quarters of manufactured home placements and historically two-thirds of all manufactured home placements (see, section II (B), below), it is self-evident that the availability of chattel financing – and expanding that availability -- is vital to the survival and future growth of the manufactured housing industry, as well as meeting the housing needs of those Americans at the lowest end of the income scale who would not otherwise have access to home ownership.

The GSEs, however, notwithstanding their statutory mission to provide home ownership support for lower and moderate-income Americans, have a long track record of hostility to manufactured housing in general and chattel-financed manufactured homes in particular. The GSEs, which routinely discriminate against manufactured housing real estate loans, currently provide no S/P support for manufactured home chattel loans and have aggressively resisted every effort to change their policies, including direct congressional intervention.

With full knowledge of the devastating impact of their policies on both the industry and consumers of affordable housing, the GSEs 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 site-built housing industry, establishment of lending transparency and best practices, and improvements to the laws that govern the production and installation of the home. And now, rather than leading the GSEs away from the policies that brought about their failure in 2008, a growing body of evidence shows that FHFA is not only endorsing, but expanding the GSEs' anti-manufactured housing and anti-chattel lending bias, which begs the question whether the GSEs and FHFA are merely misguided and dismissive of the industry and its consumers, or intentionally advancing policies designed to make the manufactured housing industry economically unsustainable.

As is detailed below, federal S/P support for manufactured home chattel lending is crucial to the continued survival of the manufactured housing industry, regardless of the ultimate disposition of the GSEs and the nature of any successor entity or arrangement. It is essential, therefore, that FHFA, as conservator of the GSEs, reject the failed policies that led to their insolvency – including their bias against manufactured housing -- and fully incorporate S/P support for manufactured housing into the fulfillment of the statutory role and mission of the GSEs.

2. Discrimination Against Chattel Financing Violates the Core Mission of the GSEs and Threatens the Future of the Industry

Congress created the GSEs to provide liquidity and stability for the American housing market and to support affordable housing and home ownership for low and moderate-income families. Yet, the GSEs, over the past decade, have failed to provide any meaningful support for federally-regulated manufactured housing, the nation's leading source of affordable, non-subsidized home ownership. This deviation from the GSEs' core statutory mission, together with a corresponding expansion of the GSEs' participation in the mortgage financing market for much higher-priced site-built homes, not only helped contribute to the GSEs ultimate failure in 2008, but has sharply curtailed the availability of private-sector purchase financing for manufactured homes, severely impacting both the industry – comprised primarily of small businesses -- and American consumers of affordable housing. And now FHFA -- the GSEs' conservator and federal regulator – is not only maintaining, but extending policies that discriminate against manufactured housing and manufactured home purchasers based on outdated, decades-old data without having conducting its own independent empirical analyses of the loan performance of modern, post-Manufactured Housing Improvement Act of 2000 (2000 reform law) manufactured homes.

While the GSEs have purchased manufactured housing real estate loans and personal property loans in the past, they currently provide no securitization or secondary market purchase support for manufactured home personal property loans and minimal or no support for manufactured home real estate loans (i.e., 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). As a result, manufactured home loans comprise less than 1% of the total portfolios of the GSEs even though: (1) 22 million Americans currently live in manufactured homes; (2) manufactured housing, since 1989, has accounted for 21% of all new single-family homes sold; and (3) manufactured housing generally -- and chattel-financed manufactured homes in particular -- provide affordable homeownership for consumers with economic demographics that fall squarely within the core mission of the GSEs (i.e., 73% of all manufactured home households earned less than \$50,000 in 2009, with a median household income of \$29,900, while 45% of all manufactured home borrowers earned 80% or less of Area Median Income).

Manufactured homes, moreover, are inherently affordable without costly taxpayer-funded subsidization, with an average structural price of \$40,600 for a single-section manufactured home (\$36.41 per square foot) as compared with an average structural cost (i.e., excluding land) of \$207,950 (\$83.38 per square foot) for a site-built home, as shown by 2011 U.S. Census Bureau data. Indeed, a December 2004 HUD-sponsored study, "Is Manufactured Housing a Good Alternative for Low Income Families?" 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 renting a home (see, Study Tables 1a, 1b and 1c at pp. 9-11).

The absence of federal S/P support for manufactured home loans and particularly the non-existence of a secondary market for manufactured home chattel loans have drastically reduced the availability of private-sector financing for manufactured homes. This effectively excludes millions of very low and lower-income Americans from the only type of home ownership they can afford, contrary to the fundamental mission of the GSEs. Together with HUD's failure to fully and properly implement key provisions of the 2000 reform law, it has also fueled an unprecedented manufactured housing industry decline that has most severely impacted the industry's smaller businesses, as only a few large corporate conglomerates – with finance subsidiaries or affiliates – currently have any significant access to private consumer financing capital. Thus, over the past decade-plus, manufactured home production has fallen by more than 86% (from 373,143 homes in 1998 to 51,606 in 2011). Over the same period, more than 70% of the industry's production facilities have closed (from 430 to 120), as have more than 7,500 retail centers, with a corresponding loss of over 200,000 American jobs and a devastating impact on job creation within the industry and allied businesses including product and component suppliers, transporters, installers, community owners and developers, insurers, financing providers and many more.

Recognizing that the GSEs are failing to fulfill their mission with respect to manufactured housing, Congress, as part of the Housing and Economic Recovery Act of 2008 (HERA), established a GSE "duty to serve underserved markets" (DTS) focused primarily on manufactured housing that directs the GSEs to "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." The DTS mandate constitutes both a finding by Congress that the GSEs have not properly served the manufactured housing market and a remedy that directs the GSEs to materially increase participation in the manufactured housing market for the ultimate benefit of very low, low and moderate-income consumers, subject to evaluation and enforcement by FHFA. In adopting this mandate, moreover, Congress went out of its way to stress that chattel loans could be considered as part of DTS (see, 12 U.S.C. 4565(d)(3) directing FHFA to "consider loans secured by both real and personal property" for DTS credit). Yet FHFA, in a June 7, 2010 proposed rule to implement DTS (see, 75 Federal Register , No. 108 at

p. 32099), concluded that chattel loans should not be considered at all and, more than two years later, has yet to issue any final DTS rule.

Consequently, notwithstanding direct congressional intervention and an express legislative mandate to develop a secondary market and flexible underwriting guidelines for both manufactured home real estate and personal property loans, there has been no improvement whatsoever in the GSEs participation in the manufactured housing market since the enactment of HERA in 2008. And while the will of Congress is being actively thwarted, the housing needs of lower and moderate-income American families – during the worst economy and housing market since the Great Depression -- are being disserved by an institutional GSE culture that refuses to acknowledge the evolution of manufactured homes from the "trailers" of yesteryear to modern legitimate "housing" and misguided FHFA policy decisions that have not only undermined DTS, but promote ongoing discrimination against manufactured housing and manufactured homebuyers by excluding manufactured home chattel loans from AHG credit altogether and by shrinking the goals applicable to the minimal number of manufactured home real estate mortgages eligible for AHG credit under the proposed rule.

FHFA, therefore, should reconsider these policies and issue an amended final rule recognizing manufactured home chattel loans for AHG credit and authorizing a program of systematic S/P support for such loans that would be consistent with: (1) the DTS mandate; (2) the goals and mission of the GSEs; and (3) the goals of FHFA and the FHFA conservatorship as expressed in FHFA's Strategic Plan.

B. FHFA Has Established No Legitimate Basis to Exclude Manufactured Home Chattel Loans from AHG Credit

Chattel lending constitutes the dominant means of financing within the manufactured housing market. U.S. Census Bureau data shows that 76% of all new manufactured homes placed for residential use in 2011 were titled as personal property, up from 62% in 2008. And although chattel financing is typically utilized by lower-income purchasers to access the industry's most affordable products, with an average (single-section) structural price some 80.5% lower than the structural cost of the average site-built home, manufactured home chattel loans are totally excluded from AHG credit by the proposed rule, consistent with a regulatory modification adopted as part of the FHFA 2010-2011 Enterprise Affordable Housing Goals final rule that deleted manufactured home chattel loans from the definition of "mortgage" contained in 12 C.F.R. 1282.1 (see, 75 Federal Register, No. 177 at p. 55892). At that time, FHFA explained this deviation from established practice as follows:

> "Mortgage. Consistent with the proposed rule, the final rule removes personal property (chattel) loans on manufactured housing from the definition of "mortgage," with the result that such purchases would not qualify for credit under the housing goals.
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> The final rule does not revise the proposed definition of "mortgage" to include personal property loans on manufactured housing. The Enterprises have minimal experience with chattel financing, and the high level of defaults related to such

financing creates significant credit and operational risks. The depreciation in the value of the manufactured home could result in greater loss to the Enterprise in the event of default on the loan. The role of the Enterprises in the market for personal property loans on manufactured housing is the subject of FHFA final rulemaking on the duty to serve requirements of HERA. FHFA may revise the definition of "mortgage" in future rulemaking to ensure conformance with the final regulation on duty to serve. Until that time, purchases of personal property loans on manufactured housing will not be counted as mortgage purchases for purposes of the housing goals."

See, 75 Federal Register, supra at p. 55894-55895. A continuation of this anti-chattel policy, however, for both the AHG goals and DTS, combined with ongoing HUD resistance to the full and proper implementation of key provisions of the 2000 reform law, would inevitably stagnate the industry at its current historically low production levels and eventually lead to its attrition to an economically unsustainable position.

Significantly, though, FHFA's rationale for this policy is not supported by the facts. First, the GSEs do have past purchase experience with manufactured home loans generally and manufactured chattel loans specifically. Accordingly, S/P support by the GSEs for manufactured home chattel loans would not be a "new activity" or "new product" within the meaning of the Prior Approval for Enterprise Products rule published by FHFA on July 2, 2009 (see, 74 Federal Register, No. 126 at p. 31602) (Prior Approval Rule), or the subsequent "new product" policy enunciated February 2, 2010 by the Acting Director. The Prior Approval Rule defines a "new activity" as "any business line [or] business practice … which was -- (a) not initially engaged in prior to July 30, 2008." Both GSEs, however, have participated in the manufactured home mortgage market prior to July 30, 2008 (indeed, the GSEs purchased 15% of all manufactured home loans as recently as 2004) and, as acknowledged by FHFA in the preamble to its proposed DTS rule, also "bulk purchased" manufactured home chattel loans prior to July 30, 2008 (see, 75 Federal Register, No. 108 at p. 32103). And since S/P support for manufactured home chattel loans would not constitute a "new" business activity for the GSEs, a priori, their alleged lack of experience with such lending is not a valid basis for excluding such loans from AHG credit.

Furthermore, even assuming, arguendo, that the GSEs did not have such experience, or did not have sufficient experience based on a reasonable and objective benchmark, the statutory DTS directive, as noted by MHARR in its July 1, 2010 DTS comments, is not discretionary and assumes that the GSEs, if necessary, will develop and acquire the necessary skills, models, practices and procedures needed to implement its mandate to serve manufactured housing and the other designated underserved markets. Obviously, if the GSEs had been providing appropriate S/P support for the manufactured housing market in the first place, the DTS directive would not have been needed. Congress, however, knew that the GSEs were shortchanging the manufactured housing market and so ordered them – and FHFA -- to change that through whatever new mechanisms were needed. For the GSEs -- and now FHFA – to claim now that an alleged lack of familiarity with the manufactured housing market, which led to the DTS directive, is a valid basis for the exclusion of chattel financing from both DTS and the AHG goals is disingenuous and represents a failure of leadership on the part of FHFA in moving the

GSEs away from the risky, high-dollar transactions that led to their failure and back toward their original goal and mission.

Second, although FHFA cites a "high level of defaults" related to manufactured home chattel loans, FHFA officials, in a May 24, 2012 meeting with MHARR, acknowledged that FHFA has not conducted a single independent study of this issue and, like the GSEs and Federal Housing Administration (FHA), lacks specific current -- or even recent -- data concerning the performance of manufactured home chattel loans, particularly data compiled since the implementation of new programs under the Manufactured Housing Improvement Act of 2000 which ensure the proper installation of all manufactured homes and consumer protection mechanisms in all 50 states. Consequently, there is no current factually-supported basis for FHFA's assertion that such loans experience a high level of defaults that would necessarily create significant credit and operational risks for the GSEs.

Third, the totality of any credit or operational risk presented by S/P support and/or AHG credit for the manufactured home chattel lending market would be miniscule and pale in comparison to ongoing losses in the site-built housing market. The performance of all manufactured housing loans – at less than one percent of the GSEs' total portfolios – was not responsible for the GSEs failure in 2008 and, because of the relatively small size of the manufactured housing market as compared with other segments of the housing industry and the much lower cost of manufactured homes, would not impair the successful rehabilitation of the GSEs or the successful transfer of their functions to a successor entity or entities, even if the GSEs provided S/P support and/or AHG credit for every manufactured home chattel loan for the indefinite future. By contrast, a de facto position on the part of FHFA, that GSE support for manufactured home chattel lending is not a valid, legitimate or permissible government activity, could establish an extremely damaging precedent that could negatively impact future legislation to resolve the status of the GSEs and should, consequently, be avoided.

Fourth, FHFA claims that "depreciation in the value of the manufactured home could result in greater loss" to the GSEs in the event of default. Industry experience shows, however, that modern, post-2000 reform law manufactured homes, when properly located, maintained and installed, retain their value and that chattel loans on such homes perform just as well as land-home mortgages. Furthermore, given that FHFA has conducted no independent studies of manufactured home values and has no current data regarding either those value trends or the performance of manufactured home chattel loans, there is no valid factual basis for such a sweeping assertion.

Even if this claim were true, however, it would still not be a legitimate basis for excluding manufactured home chattel loans from either the AHG goals or DTS. If depreciating value was a proper basis for denying S/P support or AHG credit for a particular type of home loan, then virtually all home loans entered since 2006 should be excluded, because values for all types of homes in the United States have consistently and substantially declined since that time. According to the Standard & Poor's Case-Shiller Home Price Indices released on May 29, 2012 for the first quarter of 2012, all three major home value indices (i.e., the National Composite and the 10- and 20-City Composites) fell to their lowest levels since mid-2006, with the National Composite down 35.1% from the second quarter of 2006 (see, Attachment 1). Consequently, depreciation is a fact of life for virtually all homes, all homeowners and all home loans in the current market climate. To single out the comparatively much smaller and much lower-cost manufactured home chattel loan market for discrimination in this manner is not only arbitrary and capricious, but smacks of the type of prejudice that has long hampered the manufactured housing industry and American consumers of affordable housing.

Fifth, it is disingenuous to continue the exclusion of manufactured home chattel loans from AHG credit in 2012 pending "FHFA final rulemaking on the duty to serve requirements of HERA" when FHFA – more than two years after the publication of the proposed DTS rule -- has failed to publish a final rule and has given no indication that publication of a final DTS rule is imminent or even expected (see, FHFA January 20, 2012 Semiannual Regulatory Agenda).

More importantly, a profitable long-term model for manufactured home chattel lending is already well-established within the industry (see, MHARR's July 1, 2010 comments concerning the June 7, 2010 FHFA proposed rule on the "Enterprise Duty to Serve Underserved Markets" and particularly the attached analysis entitled "Application of the Duty to Serve Underserved Markets," Attachment 2, which is hereby incorporated in the present comments by reference). This confirms, contrary to FHFA's unsupported assertions, that GSE S/P support (as well as AHG credit) for such lending – with proper pricing and underwriting – could easily become a productive business for the GSEs, consistent with FHFA's goals of conserving the GSEs' assets and protecting the interests of taxpayers, as is further demonstrated by the fact that, according to data compiled by the American Bankers Association Consumer Loan Delinquency Report, loan delinquencies for manufactured homes dropped to 3.76% from 4.08% during the fourth quarter of 2011, while the national mortgage delinquency rate rose to 6.01% at the end of the fourth quarter of 2011.

Furthermore, with an average price ratio of 7:1, the GSEs could help put seven American families into manufactured homes for each site-built home, with a lower loss severity risk per home. Given the size of the manufactured housing market in relation to other types of housing at present, such a program and corresponding AHG credit would have a minimal impact on the assets of the GSEs or their reliance on general revenues, while significantly enhancing the GSEs' compliance with the AHG goals as well as their core statutory mission of providing support for home ownership by lower and moderate-income Americans. Moreover, without a significant new investment, such a program would have an enormous impact on the availability of affordable home ownership for millions of Americans, exactly as envisioned by Congress in creating the GSEs and establishing their core mission.

At a time when, according to statistics cited by FHFA itself in its proposed rule, the overall U.S. homeownership rate has fallen to 65.5% from a high of 69.1% in 2004 and the homeownership rate for families with incomes below the AMF income has fallen from 53% in 2005 to 50.4% in 2012, AHG credit for manufactured home chattel loans would help pair very low, low and moderate-income homebuyers with modern (i.e., post-2000 reform law) manufactured homes that they can afford, thereby increasing the number of AHG-eligible loans and increasing the GSEs' compliance with the AHG goals, without resorting to the type of high-risk loans and underwriting gimmicks that landed the GSEs in conservatorship in the first place. Put differently, after years of helping put consumers into homes they could not afford -- leading to their own collapse – the GSEs should now be authorized by FHFA reinstate and expand their support for manufactured home chattel loans that are affordable for Americans at all economic levels. Such a program would not only help provide home-ownership for significant numbers of lower-income Americans, but would also save the federal government billions of dollars that would otherwise be spent on housing subsidies.

Consequently, MHARR urges FHFA to rescind the exclusion of manufactured home chattel loans contained in the final rule establishing the 2010-2011 AHG goals; authorize full AHG credit for such loans; and authorize a program of GSE S/P support for such loans because: (1) GSE S/P chattel financing support is consistent with and helps carry out the GSE's statutory mission and charter mandate of providing liquidity to housing markets; (2) GSE S/P chattel financing support is consistent with and helps carry out the Duty to Serve provision of HERA; (3) GSE S/P chattel financing support would not be a "new Activity;" (4) GSE S/P chattel financing support is consistent with FHFA's mission (and the objective stated in its Strategic Plan) of conserving GSE assets, as this line of business can be carried out profitably and such activity would constitute a very small percentage of overall GSE business; and (5) GSE S/P chattel financing support is consistent with the principle enunciated in the FHFA Strategic Plan that an important consideration in whether GSEs should purchase a particular type of loan is whether the private sector can adequately carry out this function - since it is obvious that the private sector is not currently adequately doing so.

C. AHG Credit for Manufactured Housing Chattel Loans Would
Allow the Affordable Housing Goals to be Maintained or Increased

As published, the proposed rule – excluding manufactured home chattel loans from AHG credit -- would substantially decrease the two single-family affordable housing goals from their 2010-2011 levels. Specifically, the proposed rule would decrease the single-family low-income AHG from 27% in 2010-2011 to 20% for 2012-2014 and would reduce the single-family very low-income AHG from 8% in 2010-2011 to 7% for 2012-2014, based on an assessment of various market factors that, among other things, "have contributed to a decrease in the overall share of single-family loans likely to qualify for Enterprise housing goals credit," as well as the goals of the FHFA conservatorship, i.e., (1) limiting the GSEs' risk exposure "by avoiding new lines of business;" (2) "ensuring profitability in the new book of business without deterring market participation or hindering market recovery;" and (3) minimizing losses on the mortgages already on the GSEs' books. Restoring AHG credit for manufactured home chattel loans, however, would facilitate GSE compliance with the AHG goals and provide a much larger pool of AHG-eligible loans, which would allow the AHG goals to be maintained or even increased consistent with the goals of the FHFA conservatorship -- rather than reduced – thereby promoting affordable housing for even more Americans.

A reduction of the single-family AHG goals, as proposed by FHFA, would further restrict the availability of affordable housing for Americans at a time of significant economic difficulty, when the demand for affordable housing is increasing. This, in turn, would increase the numbers of very low and lower-income Americans effectively excluded from the market for home ownership, with a disproportionately harsh impact on minority groups that already have a significantly lower homeownership rate, as shown by FHFA's own statistics (e.g., see, 75 Federal Register No. 77 at p. 34264: "The homeownership rate for non-Hispanic whites declined from a peak of 76 percent in 2004 to 73.5 percent in the first quarter of 2012. For black households, the decline was more pronounced, going from a peak of 49.1 percent in 2004 to 43.1 percent in ... 2012. The homeownership rate for Hispanic households also had a noticeable decline, going from a peak of 49.7 percent in 2006 to 46.3 percent in ... 2012"). It would also increase the number of Americans relying on government grants, subsidies or other taxpayer-funded programs currently fueling record-level federal deficits, while further suppressing the residential construction industry and related job creation which are crucial to a more robust economic recovery. Such reductions, therefore, consistent with the goals of the FHFA conservatorship and the statutory mission of the GSEs, which remains unchanged, should be avoided if possible.

Consistent with these factors, providing S/P support for manufactured home chattel loans would allow the GSEs to serve substantially more Americans without violating the goals of the FHFA conservatorship. First, as noted above, manufactured housing loans would not be a "new business," "new product" or "new activity" for the GSEs, which have purchased both manufactured housing real estate and chattel loans in the past. Second, successful long-term models within the manufactured housing industry show that S/P support for chattel loans, with properly managed underwriting and competitive risk-based rates, could and would be a profitable line of business for the GSEs. Consequently, instead of sharply limiting S/P support for manufactured housing real estate loans and excluding manufactured housing chattel loans from both S/P support and the AHG goals, FHFA should conduct its own intensive study of the loan performance of modern, post-2000 law manufactured homes and establish a fact-based program of expanded GSE participation in both (i.e. manufactured home real estate and chattel) markets.

With very little effort and minimal or no risk as compared with support for mortgages on much-higher cost site-built homes, FHFA could – and should -- be part of the solution in overcoming the GSEs' biases against affordable housing in general and affordable manufactured housing in particular. Now more than ever, FHFA should be establishing goals and policies to ensure that the GSEs' alleviate the liquidity crisis in the affordable housing market, with inherently affordable manufactured housing playing a central role.

III. CONCLUSION

As conservator of the GSEs, with responsibility not only for their fiscal stability but the accomplishment of their mission as well, FHFA needs to lead, not blindly follow and even exacerbate policies that led to the GSEs' insolvency. A huge volume of risky, high-dollar transactions led to the failure of the GSEs, not loans on affordably-priced manufactured housing. As a result, there is, quite simply, no legitimate basis for FHFA to continue or expand the GSEs' discrimination against manufactured homes and manufactured homebuyers.

A change in FHFA's approach to these issues is essential and will be a prime focus of forthcoming MHARR engagement with the 113th Congress and the Administration in the wake of the November 2012 national elections.

Sincerely,

Danny D. Ghorbani
President

Enclosures

cc: Hon. Spencer Bachus, Chairman, House Financial Services Committee (w/o enclosures)
Hon. Barney Frank, Ranking Member, House Financial Services Committee (w/o enclosures)
Hon. Tim Johnson, Chairman, Senate Banking Committee (w/o enclosures)
Hon. Richard Shelby, Ranking Member, Senate Banking Committee (w/o enclosures)

ATTACHMENT 1

S&P/Case-Shiller Index: All Three Composites Hit New Lows-Text

WASHINGTON (MNI) - The following are excerpts from the S&P/Case-Shiller Index that was released Tuesday, May 29:

Data through March 2012, released today by S&P Indices for its S&P/Case-Shiller Home Price Indices, the leading measure of U.S. home prices, showed that all three headline composites ended the first quarter of 2012 at new post-crisis lows. The national composite fell by 2.0% in the first quarter of 2012 and was down 1.9% versus the first quarter of 2011. The 10- and 20-City Composites posted respective annual returns of -2.8% and -2.6% in March 2012. Month-over-month, their changes were minimal; average home prices in the 10-City Composite fell by 0.1% compared to February and the 20-City remained basically unchanged in March over February. However, with these latest data, all three composites still posted their lowest levels since the housing crisis began in mid-2006.

In addition to the three composites, five cities - Atlanta, Chicago, Las Vegas, New York and Portland - also saw average home prices hit new lows. This is an improvement over the nine cities reported last month.

"While there has been improvement in some regions, housing prices have not turned," says David M. Blitzer, Chairman of the Index Committee at S&P Indices. "This month's report saw all three composites and five cities hit new lows. However, with last month's report nine cities hit new lows. Further, about half as many cities, seven, experienced falling prices this month compared to 16 last time.

"The National Composite fell by 2.0% in the first quarter alone, and is down 35.1% from its 2nd quarter 2006 peak, in addition to recording a new record low. The 10- and 20-City Composite mimic these results; also down about 35% from their relative peaks and hit new lows.

"There are some better numbers: Only three cities -- Atlanta, Chicago and Detroit -- saw annual rates of change worsen in March. The other 17 cities and both composites saw improvement in this statistic, even though most are still showing a negative trend. Moreover, there are now seven cities -- Charlotte, Dallas, Denver, Detroit, Miami, Minneapolis and Phoenix -- where the annual rates of change are positive. This is what we need for a sustained recovery; monthly increases coupled with improving annual rates of change. Once we see this on a broader level we will be able to say the market has turned around.

"The regions showed mixed results for March. Twelve of the cities saw average home prices rise in March over February, seven saw prices fall and one -- Las Vegas -- was flat. The Composites were largely unchanged with the 10-City down only 0.1% and the 20-City unchanged. After close to six consecutive months of price declines across most cities, this is relatively good news. We just need to see it happen in more of the cities and for many months in a row. Since we are entering a seasonal buying period, it becomes very important to look at both monthly and annual rates of change in home prices in order to understand the broader trend going forward."

As of the first quarter of 2012, average home prices across the United States are back at their mid-2002 levels. With this report, the National Index level hit a new low, down 2.0% over the first quarter of 2012 and 1.9% below the first quarter of 2011.

As of March 2012, average home prices across the United States are back to the levels where they were in late 2002 for the 20-City Composite and early 2003 levels for the 10-City Composite. Measured from their June/July 2006 peaks, the decline for both Composites is approximately 35% through March 2012. For both Composites, Marchs levels are new lows in the current housing cycle.

In March 2012, 12 MSAs posted monthly gains, seven declined and one remained unchanged. Phoenix posted the largest annual rate of change, +6.1%, while home prices in Atlanta fell the most over the year, down 17.7%.

Atlanta, Cleveland, Detroit and Las Vegas were the four cities where average home prices were below their January 2000 levels. With an index level of 102.77 Chicago is not far behind.

Since its launch in early 2006, the S&P/Case-Shiller Home Price Indices have published, and the markets have followed and reported on, the non-seasonally adjusted data set used in the headline indices. For analytical purposes, S&P Indices publishes a seasonally adjusted data set covered in the headline indices, as well as for the 17 of 20 markets with tiered price indices and the five condo markets that are tracked.

ATTACHMENT 2

Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 508 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075

July 1, 2010

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

Re: Enterprise Duty to Serve Underserved Markets
75 Federal Register, No. 108 at 32099 -- RIN 2590-AA27

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 (Act). MHARR was founded in 1985. Its members include manufactured housing producers from all regions of the United States.

I. INTRODUCTION

On June 7, 2010 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, 75 Federal Register, No. 108 at 32099). This follows an Advance Notice of Proposed Rulemaking (ANPR) published by FHFA on August 4, 2009 (see, 74 Federal Register, No. 148 at 38572), which sought general comments regarding the proper scope of the "duty to serve" and elements of a compliance evaluation methodology. MHARR submitted comprehensive comments to FHFA in response to the ANPR on September 2, 2009. Those comments are hereby incorporated by reference in this document.

As MHARR noted in its ANPR comments, the DTS mandate represents both a congressional finding that the two Government Sponsored Enterprises (Enterprises) have not, and are not, properly serving 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. Measured against these 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. Specifically, the proposed rule fails to live up to the mandate and vision of Congress for the following reasons, as explained in greater detail below:

- The proposed rule automatically eliminates more than two-thirds of the manufactured housing market from DTS by excluding homes financed as personal property (i.e., chattel financing) and land-home packages;
- The proposed rule excludes the industry's most affordable products from DTS and will enable continued discrimination by the Enterprises against very low, low and moderate-income consumers of manufactured housing;
- The proposed rule favors higher-income purchasers and higher-cost homes at the expense of the very low, low and moderate-income manufactured housing consumers that Congress intended the Enterprises to serve under DTS;
- The proposed rule restricts the implementation of DTS based on claimed "consumer protection" issues that are unrelated to the DTS mandate and the core functions of either the Enterprises or FHFA;
- The proposed rule allows the Enterprises to establish their own DTS goals and benchmarks, even though it was the failure of the Enterprises to properly serve the manufactured housing market that led to the DTS mandate in the first place;
- The proposed rule establishes no substantive FHFA standards, criteria or parameters to be met by the Enterprises;
- The proposed rule sets no fixed criteria for determining compliance with DTS, effectively allowing the Enterprises to define their own compliance;
- 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 deficiencies will be to undermine the value and utility of the DTS mandate as a means of significantly increasing the Enterprises' participation in the manufactured housing market. The proposed rule, in its current form, 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 of manufactured homes and despite that track record, leaves the Enterprises to their own devices regarding future participation in the manufactured housing market, leaving in place -- if not tacitly validating -- historical prejudices that have left low, lower and moderate-income manufactured housing purchasers without adequate access to private sources of financing capital to purchase homes that they can afford.

Prudent and profitable models for the full, robust and proper implementation of DTS, including both chattel financing and land-home packages, do exist and are detailed in MHARR's attached "Application of the Duty to Serve Underserved Markets," originally provided to FHFA as part of MHARR's ANPR comments. These products have previously been tested and used successfully by manufactured housing industry lenders. While in certain applications these models may not produce returns to the Enterprises that are comparable to other products involving other types of housing or higher-income purchasers, that, in and of itself, is no justification for a DTS rule that would allow continued discrimination by the Enterprises. Both Enterprises have benefited from privileges bestowed upon them by Congress, including tax and borrowing advantages not available to other secondary market entities. These benefits have enabled the Enterprises to dominate the market and eliminate other competition for many years. Congress has every right to expect the Enterprises to respond by honoring the broad social purposes that justified their creation in the first place. A robust, across-the-board implementation of DTS is necessary to honor that commitment and comply with the will of Congress.

Given the major deficiencies of the proposed rule and the urgent need for significant, effective and expeditious reform of the Enterprises' role in relation to the manufactured housing market, FHFA should re-consider and modify major aspects of the proposed DTS rule as addressed below -- including, most particularly, its exclusion of non-real estate transactions and the absence of any specific compliance criteria -- and adopt a final rule that fully implements DTS as Congress intended.

II. BACKGROUND

A. The Deterioration of the Manufactured Housing Industry and the Enterprises Failure to Serve the Manufactured Housing Market

The manufactured housing industry has sustained an unprecedented decline in sales and production that is due, in large part, to the virtual unavailability of private financing for manufactured home purchases. And, because manufactured housing is the nation's leading source of affordable, non-subsidized home-ownership, this decline has had a serious ongoing impact on American consumers of affordable housing including, especially, low, lower and moderate-income home buyers.

Over the past ten years, sales and production of manufactured homes have declined by nearly 90% -- from more than 373,000 homes in 1998 to 49,693 homes in 2009. This represents a catastrophic loss of affordable, non-subsidized housing opportunities for American consumers. It also reflects severe economic dislocation within the industry, with the closure of nearly two-thirds of the industry's production facilities -- from 430 in 1998 to just over 130 today -- and the loss of hundreds of thousands of jobs in all segments of the industry, and in all regions of the United States, including manufacturers, retailers, component suppliers, home installers, home transporters, manufactured housing communities, finance companies and insurance providers.

To a significant degree, the near unavailability of private financing capital for manufactured housing consumers is due to policy decisions implemented earlier this decade by the Enterprises, which effectively discriminate against manufactured homes and manufactured home consumers and in favor of higher-income purchasers of site-built and other types of housing.[1] As a consequence of these policies, manufactured housing obligations -- which had long been a minimal component of the Enterprises portfolios notwithstanding sustained growth in the broader housing economy -- have now been reduced to less than one percent of the total business portfolios of both Enterprises, even though manufactured housing has historically represented approximately 10-15% of the

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[1] E.g., Reports from both lenders and retailers show that the Enterprises' underwriting criteria, routinely, for the same loan applicant, result in the disapproval of financing for manufactured home transactions, but the approval of financing for more costly site-built home purchases. This is consistent with data cited by FHFA, which show that manufactured housing purchase applications, as of 2008, were denied at a rate three times higher than purchase applications for site-built homes. (See, 75 Federal Register, No. 108 at 32101, col. 3).

single-family housing market.[2]

B. Establishment of the Duty to Serve as a Finding and Specific Remedy for the Enterprises Failure to Serve the Manufactured Housing Market

Congress, recognizing that the Enterprises have not fulfilled their mission with respect to manufactured housing and manufactured housing consumers, included manufactured housing as an "underserved market" within the 2008 DTS mandate. That mandate directs the Enterprises to "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." The DTS mandate, accordingly, represents a finding and determination by Congress that the Enterprises have not -- and are not -- doing enough to serve the manufactured housing market (and other enumerated markets), as well as a remedy, directing the Enterprises to do more to materially increase their participation in the manufactured housing market, for the ultimate benefit of very low, low and moderate-income consumers, subject to evaluation and enforcement by FHFA.

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." (See, 42 U.S.C. 5401(b)(2)). The promise of affordable, non-subsidized manufactured housing for American families, however, means little or nothing 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.

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[2] FHFA, noting this statistic in the preamble to its proposed rule, states "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." (See, 75 Federal Register, No. 108 at 32103). This observation, however, does not explain the decline in the number of manufactured home obligations purchased by the Enterprises in relation to their overall portfolio. More importantly, though, far from absolving the Enterprises, this observation demonstrates why chattel financing and land-home packages must be included in DTS for DTS to be effective in increasing the Enterprises' participation in the manufactured housing market.

It is also significant that while the Enterprises were placed under FHFA conservatorship on September 6, 2008, after HERA and the DTS mandate were signed into law on July 30, 2008 -- as FHFA points out in the preamble to its proposed rule (see, 75 Federal Register, No. 108, at 32100) -- Congress has never waived, modified, amended or repealed the DTS mandate, nor does FHFA claim or assert that Congress has taken any such step. While Congress, obviously is aware of the conservatorship and the current status of the Enterprises, no legislation since the enactment of HERA has changed the substance of the specific DTS mandate, nor can that mandate be altered or modified by FHFA administrative policies adopted pursuant to more general agency authority.[3] Accordingly, FHFA's sweeping assertion in its preamble that "Congress developed the duty to serve requirements for normal Enterprise operating conditions, not conservatorship," is a misleading and inaccurate premise that does not support the extremely limited, narrow and constricted implementation of the DTS mandate that is set forth in the proposed rule. Notwithstanding the FHFA conservatorship, DTS is the law and must be implemented in accordance with its full purpose and intent as passed unless Congress directs otherwise -- which it has not.

III. COMMENTS

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)). FHFA, within the context of its conservatorship of the Enterprises, 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. (See, 75 Federal Register, No. 108 at 32104, col. 3). Exercising this presumed discretion, the DTS rule proposed by FHFA excludes all non-real estate transactions. (Id.) FHFA's own observations, however, confirm that DTS, without chattel and land-home transactions, will not remedy the Enterprises' failure to serve the manufactured

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[3] Nor is the statutory DTS mandate altered or modified by the "Senior Preferred Stock Purchase Agreements" executed by the Enterprises and cited by FHFA, which require the Enterprises to reduce their retained mortgage portfolios by ten percent each year. (See, 75 Federal Register, No. 108, at 32100, col. 3)

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. Moreover, careful analysis shows that FHFA has misconstrued the DTS mandate and its applicability to non-real estate transactions.

1. The Exclusion of Non-Real Estate Transactions Will Render DTS Virtually Meaningless

By FHFA's own acknowledgment, manufactured homes financed as personal property constitute approximately 63 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 approximately two-thirds of the market. Yet both categories are excluded from DTS, automatically limiting DTS to no more than 30 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, the 30 percent figure drops even lower, and other restrictions cited by FHFA will restrict that number even further.[4] 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 submitted to -- or approved by -- FHFA under the proposed rule.

Nor does one have to be clairvoyant to anticipate such a result. As FHFA acknowledges in its 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." (See, 75 Federal Register, No. 108, at 32103, col. 2). 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.

For example, in 2004, the Enterprises purchased 15% of all manufactured home loans. In 2005, Enterprises purchases fell to 13.3 percent of all manufactured home loans. Extrapolated to 2009 production levels, Enterprise purchases at these levels (even if they remained constant) would involve less than 7000 manufactured homes nationwide.

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[4] See, e.g., 75 Federal Register, No. 108 at 32112, col. 1-2, regarding HOEPA mortgages and mortgages that do not conform to the "Interagency Guidance on Nontraditional Mortgage Risks," among others.

Even if this presumed activity level were increased by a factor of 50%, the market would only see an increase of 3500 homes based on 2009 production. But, with DTS limited to homes titled as real estate only, even such a minor improvement is unlikely, as is demonstrated by the failure, to date, 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 unutilized and has had no impact in increasing the availability of private manufactured housing financing for anyone. Consequently, limiting DTS to real estate transactions, and focusing on possible -- not even certain -- changes to the Enterprises' underwriting standards for manufactured home transactions to increase Enterprise participation in the manufactured housing market, as FHFA implies in its preamble (see, 75 Federal Register, No. 108 at 32110, col. 1), is a recipe 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.

Even worse, the proposed exclusion of homes financed as personal property would eliminate the industry's most affordable homes from DTS and would continue -- rather than reverse -- Enterprise policies that effectively discriminate against lower-income Americans who purchase manufactured homes.

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 Census data, as of 2005, averaged $31.30 per square foot (PSF) for a single-section home and $39.77 PSF for a multi-section 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 2005 (structure only) sales price of $33,800, as contrasted with $68,600 for a multi-section home.

Consequently, FHFA's determination that "very-low, low and moderate-income families can be best served" through a DTS rule limited to "manufactured housing titled as real estate," is not supported by the facts. DTS, as conceived by FHFA (and the Enterprises, through their ANPR comments), would provide marginal benefits for the most highly-qualified manufactured home purchasers, while leaving lower-income families no better-off than they are now, with virtually no support from the Enterprises.

2. There is No Valid Basis for the Exclusion of Non-Real Estate Transactions from DTS

FHFA, in its proposed rule -- much like the Enterprises for most of the past decade -- 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 in carrying out Congress' mandate. Reduced to their essence, FHFA offers two reasons for excluding non-real estate transactions from DTS: (1) "neither Enterprise has an ongoing business activity of purchasing" such loans, which "would require each Enterprise to develop operational capacities and risk management processes not currently in place;" and (2) "to ensure that lending was done responsibly," each Enterprise would be required to "develop an extensive set of consumer protection requirements." Based on these determinations -- which parallel assertions contained in the ANPR comments of the Enterprises and certain "consumer" groups -- FHFA concludes that the inclusion of chattel and other non-real estate loans in DTS would be "inconsistent with Enterprise conservatorship." This conclusion, however, flows from a distorted understanding of the Enterprises' relationship with manufactured housing and the manufactured housing market.

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 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 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 that they would somehow be harmed by the performance of a comparatively small number of lower-cost manufactured housing chattel loans, is brazenly 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 attached MHARR "Application of the Duty to Serve Underserved Markets" 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.

Because of past bad practices, the Enterprises, as FHFA notes, have been bailed-out with hundreds of billions of dollars in taxpayer funding. If the Enterprises would devote a fraction of that amount -- such as $10 billion -- to workable loan programs of all types for manufactured housing, consistent with the intent and design of DTS, they would help provide home-ownership for hundreds of thousands of lower-income Americans, while saving the federal government billions of dollars that would otherwise be spent on housing subsidies.

Furthermore, 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.

In addition, FHFA, citing ANPR comments, notes that non-real estate transactions are excluded from DTS, in part, because such loans "provide low income families with higher rates, less optimal terms and reduced consumer protections as compared to a mortgage loan." (See, 75 Federal Register, No. 108 at 32103). While it is true that chattel loans generally do carry a higher interest rate than 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 supposed to be serving under their respective Charters and DTS -- from the manufactured housing market and the only form of home-ownership that they can afford. The types of consumer protections sought by certain ANPR commenters, very simply, are of no value to consumers who will be unable to qualify for manufactured home financing due to the exclusion of chattel loans from DTS.

3. The DTS Mandate for New Enterprise "Programs" to serve Manufactured Housing is Not Discretionary

The exclusion of non-real estate financing from DTS also represents an unduly restrictive and incorrect reading of the DTS directive. In relevant part, the DTS mandate states that the Enterprises "shall develop loan products and flexible underwriting guidelines to facilitate a secondary market" for manufactured housing. (Emphasis added). It is black-letter law that the term "shall," as used in congressional legislation, imposes a mandatory obligation. Moreover, as remedial legislation, designed to reverse and cure the Enterprises' historical failure to serve the manufactured housing market as determined by Congress, DTS must be construed and applied in a liberal manner to achieve its full remedial purpose.

As FHFA acknowledges in its preamble, the Enterprises do have limited loan products for manufactured homes titled as real estate, but do not have programs for the purchase of non-real estate manufactured housing obligations. (See, 75 Federal Register, No. 105 at 32103, col. 1-2). Congress, under relevant judicial authority, is presumed to know the state of the law, as well as pertinent regulations and facts when it legislates. See, e.g., Flora-Miramontes v. I.N.S., 212 F.3d 1133 (9th Cir. 2000). Accordingly, the mandatory DTS directive to "develop" products (i.e. products that do not currently exist) must necessarily apply to and include non-real estate transactions, for which the Enterprises have no current products. Any other reading of the term "develop" would leave that term meaningless, contrary to the cannons of statutory construction, which require that each word of an enactment be given its full effect according to its common and ordinary meaning. See, e.g., O'Kane v. Apfel, 224 F.3d 686 (7th Cir. 2000), Beisler v. Commissioner of Internal Revenue, 814 F.2d 1304 (9th Cir. 1987).

This specific statutory directive, moreover, takes precedence over the more general policies enunciated by FHFA in its February 2, 2010 letter to Congress regarding the development and approval of new products while the Enterprises are in conservatorship. (See, 75 Federal Register, No. 108 at 32100, col. 3). Consequently, the conclusion set forth in that letter, that "having the Enterprises engage in new products would be inconsistent with the goals of conservatorship," is inapplicable to the new "products" that Congress specifically directs the Enterprises to develop under DTS.[5]

Nor is the mandatory nature of this directive altered by the language of the compliance section of DTS, which states that the Director, in determining the Enterprises' compliance with DTS, "may" consider loans secured by "both real and personal property." Given the specific remedial purpose of DTS and Congress' objective to address the plight of very low, low and moderate-income consumers in obtaining and qualifying for private financing for manufactured home purchases, the mandatory directive to the Enterprises to "develop" new programs necessarily takes precedence over the latitude granted FHFA in evaluating the performance of the Enterprises under that mandate.

B. The Lack of Specific Compliance and Evaluation Criteria Will Allow Continuing Discrimination by the Enterprises

In its ANPR comments, MHARR urged FHFA to provide the Enterprises reasonable flexibility in meeting the substance of the DTS mandate, so long as relevant DTS regulations were promulgated in accordance with the January 1, 2010 statutory deadline, and such regulations were implemented expeditiously. The rule proposed by FHFA, however, contains no benchmarks whatsoever for compliance by the Enterprises and no objective evaluation criteria for compliance, effectively leaving the Enterprises free to continue discriminatory policies against the small segment of the manufactured housing market that would be subject to DTS.

According to the proposed rule, each Enterprise would develop an "underserved markets plan" in which the Enterprise itself "would establish benchmarks and objectives upon which FHFA would evaluate and rate its performance." (See, 75 Federal Register, No. 108 at 32110, col. 1). Without any objective criteria from FHFA, however, as to the level of performance that would be necessary to establish adequate compliance with the statutory mandate, this effectively allows the Enterprises to establish their own rules for

[5] It should be emphasized that these products, while "new" to the Enterprises, have already been successfully tested and used -- profitably -- within the manufactured housing industry, as detailed in MHARR's attached "Application of the Duty to Serve Underserved Markets."

compliance. And given the Enterprises' track record in failing to serve the manufactured housing market -- the very failure that led Congress to enact DTS -- as well as the overt hostility toward manufactured housing that remains evident in the Enterprises' respective ANPR comments, there is no reason to believe that the Enterprises will make any effort, under the regime established by FHFA, to significantly increase their participation in the relatively small real estate portion of the manufactured housing market. Nor is there anything in the proposed rule to indicate, objectively, the circumstances under which FHFA would reject a proposed underserved markets plan for insufficiency, as contrasted with evaluating an Enterprises' compliance with such a plan.

Similarly, the "assessment factors," as described by FHFA, do not provide the type of objective criteria that would be needed to materially alter the Enterprises' failure to properly serve the manufactured housing market. While MHARR endorsed a flexible compliance evaluation methodology, the assessment factors outlined by FHFA are flexible to the point of being devoid of substance. For example, under the "loan product assessment factor," credit would be given for "research and development activities that may not show results in their initial phase." (See, 75 Federal Register, No. 108 at 32110, col. 2). Manufactured housing consumers, however, need loans now -- not more "research and development." The Enterprises have had more than ten years that the manufactured housing market has been in decline to do "research and development." The industry and its consumers -- as recognized by Congress -- need relief now, not more promises of future acceptance. Similarly, under the "investments and grants assessment factor," FHFA would consider "grants that promote peer learning and industry knowledge on innovative and promising practices on the development of new products and activities." (Id. at 32111, col. 1). Neither this nor any of the "outreach" proposed by the Enterprises for DTS credit in their ANPR comments will result in a single new home being financed.

In the same manner, the proposed meaning of "satisfactory performance" pursuant to an underserved markets plan, is "flexible" to the point of being meaningless. According to the proposed rule, "satisfactory performance" would mean that an Enterprise "has diligently and with a degree of success pursued opportunities and acted on opportunities to serve the market in a given year." (See, 75 Federal Register, No. 108, at 32111, col. 2)(emphasis added). First, a "degree of success" is purely subjective and could mean virtually anything. Second, opportunities can be "pursued" and "acted" upon without purchasing more loans or developing new products to expand market participation. Under this evaluation methodology, the Enterprises would be awarded DTS credit for effort, rather than concrete results in better serving manufactured housing consumers. This is a recipe for a great deal of window dressing, with little actual change in the Enterprises current discriminatory approach to the manufactured housing market.

And even this minimal and subjective compliance structure would be subject to a further proviso that would allow the Enterprises to avoid enforcement of DTS, after the fact, upon a finding by FHFA that a plan was not "feasible," based on market conditions and/or the financial condition of the Enterprise. (See, 75 Federal Register, No. 108 at 32112, col. 2). Put differently, under this proviso, an Enterprise could avoid action to enforce DTS based on a showing, after such non-compliance, that the Enterprise's underserved markets plan was not feasible due to market conditions or its financial status. Given current conditions in the housing market and given the current financial condition of the Enterprises, this is effectively a pre-performance waiver by FHFA -- a "get-out-of-jail-free" card for the Enterprises that will be used to excuse non-compliance with DTS from day one. While the condition of the Enterprises and the markets affected by DTS is certainly relevant, this proviso, combined with the absence of any objective compliance criteria and a lax evaluation system, will virtually ensure the preservation of the status quo regarding manufactured housing.

While MHARR does support and commend FHFA's specific references to the underwriting practices of the Enterprises regarding manufactured housing and the possible re-evaluation and/or reconsideration of those practices and policies under DTS (see, 75 Federal Register, No. 108 at 32110, col. 1), and also supports the concept of allowing DTS credit for the same transaction for multiple underserved markets, these positive elements are far outweighed by weaknesses and deficiencies that are inherent in the proposed rule.

C. The Proposed Rule Does Not Address Self Insurance or the Purchase of FHA Title I Loans

Aside from the deficiencies explained above, the proposed rule fails to address the two critical issues raised by MHARR in its ANPR comments -- (1) the unavailability of mortgage insurance and the self-insurance of manufactured home transactions by the Enterprises; and (2) purchases of Federal Housing Administration (FHA) Title I manufactured housing loans by the Enterprises.

As MHARR noted in its ANPR comments, and as FHFA acknowledges in its preamble, the unavailability of private mortgage insurance (PMI) for manufactured home transactions has been a significant contributing factor to the sustained decline in industry production and sales. (See, 75 Federal Register, No. 108 at 32101, col. 3). In its ANPR comments, MHARR called upon FHFA to address this issue under DTS by either allowing the Enterprises to self-insure manufactured housing transactions, or "explor[ing] other alternative means of providing the additional security that mortgage insurance would typically provide under normal market conditions."

Unfortunately, the proposed rule, while citing the problem posed by the lack of PMI, fails to address the issue and its consequences for consumers. FHFA should correct this in the final DTS rule by providing specific authorization for such a program. The DTS mandate, as FHFA notes, imposes a "new obligation" on the Enterprises. (See, 75 Federal Register, No. 108 at 32100, col. 3). The necessary corollary of this new duty is a grant of sufficient authority to FHFA to allow the Enterprises to successfully carry out that duty. Accordingly, FHFA should specifically authorize the Enterprises to self-insure such transactions pending further market developments.

In addition, FHFA should specifically authorize the Enterprises to purchase FHA Title I manufactured home loans. Such collaboration between the Enterprises and FHA, involving FHA-insured obligations, would have a synergistic effect in increasing the availability of all types of financing for manufactured housing and potentially expanding the number of lenders that participate in the manufactured housing market.

III. CONCLUSION

For all of the foregoing reasons, including most importantly, the proposed rule's exclusion of non-real estate transactions from DTS and its failure to establish meaningful and compliance and evaluation standards and criteria, MHARR urges FHFA to modify its proposed rule and adopt a final DTS rule that: (1) includes chattel financing and land-home packages; (2) provides more specific and rigorous criteria for DTS compliance and compliance evaluation; (3) specifically authorizes self-insurance of manufactured housing purchases by the Enterprises; and (4) that specifically authorizes the Enterprises to purchase FHA Title I manufactured housing loans.

Very truly yours,

Danny D. Ghorbani
President

cc: Hon. Christopher J. Dodd, Chairman, Senate Banking, Housing and Urban Affairs Committee
Hon. Richard C. Shelby, Ranking Member, Senate Banking, Housing and Urban Affairs Committee
Hon. Barney Frank, Chairman, House Financial Services Committee
Hon. Spencer Bachus, Ranking Member, House Financial Services Committee
Mr. Edward DeMarco, Acting Director, Federal Housing Finance Agency

APPLICATION OF THE DUTY TO SERVE UNDERSERVED MARKETS PROVISION OF THE HOUSING AND ECONOMIC RECOVERY ACT OF 2008

MANUFACTURED HOUSING LENDING

PREPARED BY THE

MANUFACTURED HOUSING ASSOCIATION FOR REGULATORY REFORM

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Manufactured Housing Association for Regulatory Reform
Suite 508
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel. (202) 783-4087
Fax (202) 783-4075
Email: MHARRDG@AOL.COM

TABLE OF CONTENTS

INTRODUCTION

The Housing and Economic Recovery Act of 2008 (HERA) was enacted into law in July 2008. The passage of this legislation was historic in many ways, but none more marked or important than the "Duty to Serve Underserved Markets" provision contained in Section 1129. This bill was written to reform the laws that govern the operation of Fannie Mae and Freddie Mac, the two Government Sponsored Enterprises (GSEs), which have the greatest impact on capital liquidity, loan products and the nation's ability to offer mortgage financing for home ownership.

Part of the mission of the GSEs has always been to provide loan programs to fulfill established goals for affordable housing (the law specifically enumerates manufactured housing as affordable housing). Today manufactured housing ("MH") stands alone in its ability to house America affordably without significant support from government subsidies. Yet the GSEs have largely ignored and discriminated against manufactured housing. By the GSEs' own admission, MH loans make up less than 1% of their portfolios, even though historically MH has represented 10% to 15% of annual new single family housing starts in the United States. (Over the past twenty-five years, MH has represented as high as 25% and as low as 5% of annual single family housing starts. The large swings have been brought about by the boom or bust mentality of finance in both the site-built market and the MH market. Historical averages place annual volumes of sales of new manufactured homes at approximately 250,000 homes per year which is approximately 15% of recent housing trends.)

It is because of these discriminatory practices that the Duty to Serve was included in the law. The requirements of Duty to Serve cannot be interpreted loosely. The GSEs, by nature, are capital raising entities that support the liquidity of capital available for mortgage financing. The law now requires specifically that the GSEs "increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets," which specifically includes manufactured homes. Furthermore the law states that "the 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."

While there may be various ideas about the establishment of benchmarks for the measurement criteria related to the Duty to Serve, it cannot be denied that historically the MH industry has been "grossly" underserved. The primary "push-back" by the GSEs over the years to the inclusion of loan products for MH products in the fulfillment of their affordable housing goals has been that MH loans will not perform and cannot be profitably originated and serviced. This paper has been prepared to provide:

1. A review of historical MH loan performance;

2. A discussion of profitable MH lending models; and

3. Action steps necessary for the GSEs to fulfill the Duty to Serve.

HISTORICAL LENDING

Since 1976, the manufactured housing industry has been comprehensively regulated by HUD. The original regulatory legislation, the National Manufactured Housing Construction and Safety Standards Act of 1974, had a remarkable impact, resulting in an improvement of the industry's homes. Subsequent legislation, the Manufactured Housing Improvement Act of 2000 (2000 Act), filled gaps left in the regulation of the industry related to standards for installation and dispute resolution to assist consumers with issues in the field.

Even though improved industry practices, products and installation have now been implemented, for several years industry lenders built successful lending models that served the industry well and produced profitability for the lenders. Improved industry practices will only serve to enhance these lending models. The industry has actually received a "bad rap" concerning the idea that lenders cannot produce performing loans on Manufactured Homes. This stereotype has been propagated by three events.

First, during the 1980's the failure of the "oil patch" economy caused significant repossessions and foreclosures of manufactured homes. This occurred because the states of Louisiana, Texas and Oklahoma suffered horrendous economic devastation during a time of upheaval in the oil industry. These states also accounted for approximately 25% of the market for manufactured homes in the U.S. While the industry acknowledges that many loans failed, the fact is the economic devastation was not limited to MH loans. Mortgage loans on site-built homes and commercial loans also failed to perform to the same degree as the failure of MH loans. These failures were brought about by the economic anomaly suffered by the oil patch states. MH loan performance was a function of the economic landscape, not a failure of the lending model or the underlying collateral, and was impacted to the same degree as other classes of assets.

Second, in addition to the problems stemming from the oil patch economy, during the 1980's, the Savings and Loan industry was devastated by poor loan performance due to bad and fraudulent lending practices. These bad practices were applied to commercial and site-built loans, but did not follow MH loans. The reason MH loans originated by the thrifts were not subject to similar loan performance is due to Advance Based Lending Models as opposed to Appraisal Based Lending Models. Abuses in appraisal led to significant overvaluation practices which impacted loan performance for commercial and site built home loans ultimately causing the failure of the thrift system and the creation of the Resolution Trust Corporation. The fact is, MH loans significantly out-performed other classes of assets originated by the thrifts.

However, despite the performance of its loans, manufactured housing suffered because the thrift system originated approximately 30% of the loans on manufactured homes during the mid-80's. The failure of the thrift system eliminated a significant portion of MH lending capacity, although loan performance was better than other classes of assets. This fact is understood with more clarity by looking at the start-up of Greentree Financial. Greentree was a spin-off of an MH portfolio from a failing S & L that started the growth process of the nation's leading MH lender in the 1990's. The only performing portfolio of the S & L was an MH portfolio acquired by Greentree in its start-up.

Greentree led the way to the creation of a market for Asset Backed Securities for MH loans during the late 1980's and early 1990's. By 1992 there were two companies that were public issuers of debt secured by MH loans. This market was approximately $2 billion annually. These lenders proved to be very profitable and the paper performed exceedingly well. However, from 1992 through 1998 the lending community in the industry grew from two lenders to fifteen, and the annual volume of loans grew from $2 billion to $18 billion. With this increase in competition, lending practices deteriorated leading to poor underwriting practices and ultimately poor loan performance (especially during the years of 1997 through 2001) and the devastation of lending for the industry.

This period of time in industry lending is the basis for the third reason MH loans are given a bad rap. It is important to note that the situation that occurred in MH lending in the late 1990's is almost identical to the problems that are occurring today in the Mortgage Industry. Increased competition in lending for site-built mortgages created poor lending practices which led to the fall in the housing industry generally and the tipping point for the current credit crisis and recession. The point to understand is that bad lending practices in MH lending are just as destructive as in mortgage lending. The underlying collateral of MH did not cause the poor loan performance; bad lending practices did, just as it has in the mortgage industry.

Since the exit of many lenders from the industry, many improvements have been made by the industry to return to sound lending practices and insure a profitable lending model. One of these improvements includes the passage of the 2000 Act, which provides for the nationwide regulation of installation and a dispute resolution process for consumers. These facts are proven by the survival of several lenders in the MH industry. These lenders have continued to operate with sound underwriting practices and have remained profitable. However, the current credit crisis has eliminated the ability, even for these lenders, to sell MH loans in the marketplace, creating considerable stress for an already troubled industry.

HISTORY OF GSE LENDING ON MANUFACTURED HOMES

The GSEs have continued to push-back against creating MH loans because of the myths related to the aforementioned issues, which has been exacerbated by their poor understanding of MH lending models and lack of oversight of MH lending practices as it relates to conforming mortgage products. During the time of deterioration of MH lending in the industry (as mentioned above), retailers sought other avenues of finance. The deterioration in chattel and hybrid non-conforming loan products led to the sale of homes utilizing conforming mortgages as a finance vehicle. At that time, the GSEs had established no real differences in mortgage criteria for site-built homes as it compared to traditional MH product. Accordingly many homes that had differing collateral characteristics were appraised and underwritten to the same standards as other classes of collateral (i.e., site-built homes). These homes were placed on pier block foundations with non-structural skirting and steps, but appraised as homes installed on permanent foundations. While these classes of collateral perform differently than their site-built counterparts, when underwritten and financed properly, they can and do perform profitably for lenders. The primary issue here is that MH products were "over-valued" because there was no difference in appraisal standards, which ultimately led to poor performance. The problem was not the underlying collateral, but the system used to underwrite and value the homes.

In 2003, the GSEs made significant changes in the way that MH products were underwritten and appraised. These changes have led to an improvement in loan performance for MH conforming loan products (albeit coinciding with the deterioration of site-built products to such a degree that conservatorship has been instituted to keep the GSEs viable). Although there has been an improvement in MH loan performance for the GSEs since 2003, there have been no steps taken by the GSEs to insure that MH is reasonably served to meet its affordable housing goals. The lack of these steps has led to insignificant MH originations as compared to other forms of housing.

There has been no attempt by the GSEs to look at traditional lending models or to provide creative loan product designs that both support the origination of MH loans and provide profitability for lenders. All of these issues have been compounded by today's current credit crisis, producing a significant shortage of available lenders and loan programs for purchasers of manufactured homes. The sad commentary here is that profitable MH lending models exist and MH products are the most affordable housing alternative available without subsidy from the government. In a time where record federal deficits exist, the fulfillment of the Duty to Serve for manufactured housing has never been more important.

With MH lending being applied to lower price points (traditionally from $35 to $55 per square foot, exclusive of land, significantly less than most site-built homes) 100,000 families a year could be financed in affordable housing for approximately $10 billion in originations annually. Currently, funds have been set aside by the government to purchase the securities of the GSEs and the industry believes that there should be a portion of these funds earmarked to insure the fulfillment of the Duty to Serve mandate.

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 segment of the housing industry, establishment of lending transparency and best practices (this pre-dates the efforts of regulators currently reviewing mortgage lending practices) and updates to the laws and building codes that govern the production, sale and installation of the home. Today, there are profitable lenders in the industry, but there is no viable market for the sale of their loans. Furthermore, manufactured housing has provided millions of Americans with the most affordable housing option available, other than government sponsored subsidy programs. Literally, manufactured housing stands alone in its ability to help lower and moderate-income Americans fulfill the dream of home ownership. However, while the industry has worked hard to overcome its lending woes, the industry has continued to suffer due to a lack of available financing.

LENDING PROGRAMS

Traditional finance models for manufactured housing have generally included a variety of finance options. The various loan products all have characteristics that are designed to mitigate lender risk based on the collateral characteristics involved. These characteristics include, but are not necessarily limited to, interest rate, term of loan, down payment requirements and the like. These long-standing industry options need to be combined with an improvement to the way MH is treated in the conforming mortgage market as well. Below is a discussion of the various types of programs necessary to revive lending for manufactured homes and to make an important first step toward fulfilling the requirement of Duty to Serve.

Chattel Financing: A Chattel Loan (personal property) is an installment loan that uses the "home only" as collateral for the loan. This lending product has traditionally been the backbone of the industry, with many homes going on private property, sometimes owned by the homeowner but not included in the collateral of the loan, or in land-lease parks and communities. The amount financed is calculated via an Advance Based System using the invoice of the home manufacturer. The advance worksheet (a typical worksheet has been provided in the attached Appendix) generally provides a maximum amount available to finance up to 150% of the manufacturer's invoice amount (subject to certain limitations) for the home to the retailer, plus add-on amounts (allowances) for set-up and installation, skirting or foundation walls, steps, air conditioning and other appurtenances. While many lenders use various criteria in their proprietary lending models to determine the advance rate (amount available for finance) and the interest rate on the loan, most lenders utilize a system which uses some or all of the following loan characteristics to determine the amount available for finance: term of the loan, purchaser credit score or criteria, type of collateral (single-section or multi-section, new or used), age of the home, down payment and manufacturer invoice disclosures among other factors. Minimum down payments start at 5% and typical standard loan models include programs of up to 20% down payments. The term of the loan varies from 7 to 15 years for single-section homes and from 10 to 20 years for multi-section homes. Chattel based financing is typically done in an accelerated closing and installation process because no mortgage is required on the land. Today's lenders have addressed concerns with escalating rents in parks through agreements with park owners and typically get landlord waivers from private property owners.

Land-Home Financing: A Land-Home Loan is a special type of non-conforming mortgage loan. The home and the land are both included as collateral for the loan in the mortgage. Additionally the closing process and certain requirements of conforming mortgages are waived, streamlining and accelerating the loan process. (An example of these waivers is the elimination of mortgage insurance. Typically this is accomplished without additional lender risk through higher rate structures than conforming mortgages.) The amount financed is based upon a hybrid system using the appraised value for the land and an Advance Based System similar to chattel loans (otherwise described as "a modified cost basis approach") for the home plus the cost (subject to allowance maximums) for appurtenances. The maximum amount available for finance is the appraised value of the land, plus up to 150% of the manufacturer's invoice for the home to the retailer (Please refer to the Chattel Loan Worksheet in the Appendix), plus the cost of add-on amounts (allowances) for set-up and installation, skirting or foundation walls, steps, air conditioning, porches, garages and other appurtenances. Land-home loans allow for both the installation of manufactured homes on traditional pier block systems with non-structural skirting and for permanent foundations systems.

While many lenders use various criteria in their proprietary lending models to determine the advance rate on the home (amount available for finance) and the interest rate on the loan, most lenders utilize a system which uses some or all of the following loan characteristics to determine the amount available for finance: term of the loan, purchaser credit score or criteria, type of collateral (single-section or multi-section, new or used), age of the home, down payment and manufacturer invoice disclosures among other factors. Minimum down payments start at 5% and typical standard loan models include programs of up to 20% down payments. The term of the loan varies from 10 to 20 years for single section homes and from 10 to 25 years for multi-section homes. Land-home financing also includes a construction loan type feature (also known as staged funding) for the retailer, which allows for the funding of the land, improvements and the home, through construction draws.

Conforming Mortgage Financing: A conforming mortgage loan is based on the finance model determined by the GSEs. The home is attached to a permanent foundation and both the land and home are included in the mortgage. Conforming mortgage products carry specific requirements for surveys, appraisals, mortgage insurance, etc. While conforming mortgage loans have generally been available from the GSEs for some time, manufactured housing loans are appraised and underwritten to discriminatory standards compared to site built homes with higher interest rates, thus only producing a small number of loans annually. (Today's MH loans represent less than 1% of the portfolios of the GSEs.) The manufactured housing industry builds many homes that have the same aesthetic and construction characteristics as site-built homes. For these "high end" manufactured homes there should be no difference in standards applied for interest rate, term, appraisal or underwriting criteria than are applied to site built homes.

SPECIAL CONSIDERATIONS

While the above information is a synopsis of loan product designs, in order to serve the low-to-middle income and first-time home-buyer, there is a great need for special programs as well. These programs include the following:

1. **Land In Lieu of Down Payment**: Many customers already own a piece of land. Programs must be established to allow the customer to use the equity in their land in lieu of all or a portion of the down payment requirements for the loan. Amounts available for substitution of the cash down payment should be up to 65% of the appraised value of the land.

2. **Higher Equity Loans**: Many customers have issues with their credit history. Programs should be established that allow the purchase and finance of a home with lower credit scores through higher down payment requirements. Because manufactured homes are less expensive than site built homes, higher equity programs for lower credit score customers are much more attainable.

3. **Buy-For and Co-signer Loans**: Many customers purchase homes (primarily through chattel loans) where their parents or a relative help the customer with the purchase of the home. This additional help is considered a credit enhancement and particularly helps first-time home buyers.

4. **Stated Income Loans**: Some purchasers of homes are self-employed and

CURRENT CONSIDERATIONS MAINTAINED BY THE GSEs

While it is clear that the GSEs have not moved to create lending products necessary for the industry to survive, the GSEs have expressed a concern related to their ability to offer securities that allow the inclusion of these types of loan products in their Mortgage Backed Securities ("MBS") offerings. The GSEs have stated that the prevailing reasons for this include:

1. Appraisal based lending as opposed to other valuation methods such as Advance Based Lending (Modified Cost-basis Approaches).
2. The inability to accept industry practices relating to title perfection through the combination of title lien perfection and real estate mortgage liens.
3. Differing prepayment speeds.
4. Lack of PMI.
5. Lack of available market for the securities.

A brief discussion of each issue follows.

Advance-Based Lending: GSEs have long held that appraisal-based systems are the "holy grail" to valuation of collateral. The current lending crisis, and the previous crisis in the thrift industry, prove that appraisal-based lending has its limitations. Over the years, Advanced Based Lending systems used by the MH industry have a long-standing track record of reasonable collateral valuation. Recovery rates on defaults have been fairly consistent except during times of poor lending practices. (No industry or collateral class is immune to finance abuses as demonstrated by the current credit crisis.) The industry believes it is prudent for the GSEs to modify the appraisal guidelines to allow for alternative methods of value based on the manufacturer's invoice for the home.

Combination Title Lien Perfection: While there may be disclosure requirements that have to be added to MBS offerings, the industry has securitized billions of dollars of loans with combination title perfection methods. These methods have proven sound for the lender to effect repossessions and foreclosures and maintain a proper security interest in the underlying collateral.

Differing Pre-payment Speeds: While the industry does not argue that chattel loans may have a different pre-payment speed than traditional mortgage loans, there is adequate industry data available to predict the pre-payment characteristics of such loans. These pre-payment speeds may have to be managed through changes in disclosures or the find it difficult to verify income. These issues affect all segments of the housing industry. Site-built lenders have traditionally provided for underwriting criteria to allow such borrowers to qualify for a loan. Similar types of loan programs should be applied to manufactured housing as well.

5. **Other Innovative Products**: The Duty to Serve includes support for very low, low and moderate-income families. While manufactured housing is uniquely positioned to serve these markets because of lower price points, consideration should be given to varying down payment programs and other innovative loan programs.

LENDING PROGRAM HIGHLIGHTS

Chattel Loans
Quick Closing Process
Personal Property Installment Loan
Advance up to 150% of Invoice
Minimum 5% Down Payment
Rate Buy Downs Available

Land-Home Highlights
Hybrid Mortgage Loan
Construction Loan/Staged Funding Included
No PMI Required
Rate Buy Down Available
14 Day Closing
Construction to Permanent Single Closing
Minimum 5% Down Payment
Appraised Value of Land and 150% of Invoice, plus cost of Appurtenances

MH Conforming Mortgage
On Par With Site Built
Longer Finance Term
Lower Rates Available
Appraisal Based System

separation of asset classes in differing securities.

Lack of PMI: Currently mortgage insurers have limited their coverage of MH loans due to significant problems of their own. While these issues may also be linked to charter requirements and disclosures, the finance industry has successfully offered profitable securities under the lending models presented without mortgage insurance for years. The additional risk is mitigated through higher rates and other changes in loan characteristics as mentioned.

Lack of Available Investors: While this paper does not discuss the merits of whether MH loans originated under the lending models presented are includable in current MBS offerings of the GSEs, today the two major investors of the GSEs securities offerings are the Treasury Department and the Federal Reserve. It is apparent that the GSEs have many issues related to the issuance of any security regardless of the inclusion of MH loans. Accordingly there must be a consolidated effort for FHFA, the GSEs, the Treasury and the Federal Reserve to work together to create both a viable security offering for MH loan products and a working market for MH securities.

ACTION STEPS TO FULFILL DUTY TO SERVE

There are a number of things that must be done in order for the GSEs to fulfill the requirements of Duty to Serve. These include the following:

1. FHFA must initiate significant discussions with the MH industry and the GSEs to provide for the creation of innovative loan products to serve consumers of affordable housing. This paper serves as a background document to facilitate such a discussion. Information is readily available from current industry lenders to assist in the creation of such loan products.

2. While, in due course, regulations and rules will need to be established governing benchmarks and measurement criteria to determine whether the GSEs are meeting their obligations under the law, it is obvious that a sense of urgency must be applied to spark lending immediately. The early establishment of loan products could produce an additional 30,000 to 40,000 home sales annually. This situation would provide significant aid to the ailing MH industry and would be a positive first step toward meeting the Duty to Serve requirements. Over the course of time, final benchmarks and improvements in loan products could be accomplished to insure the ongoing compliance with the law by the GSEs. However, without immediate action there will be no industry left to serve.

3. The creation of loan products may also require the facilitation of market investors which most likely will require intervention by the Treasury and the Federal Reserve until markets stabilize. This situation will require coordination and communication among the various federal agencies to create an immediate market for MH loan products.

4. The provisions of a final rule to implement DTS should be applicable to -- and binding upon -- any successor or survivor entities to the current GSEs. In the event that legislation is deemed necessary to accomplish such transferability of the DTS mandate, an appropriate provision should be included in any bill that provides for the reform or transformation of the GSEs.

5. To strengthen and enhance the DTS mandate and its positive impact for consumers, FHFA, either through the final DTS rule or by separate expedited rulemaking, should expressly authorize the GSEs: (1) to purchase and securitize FHA Title I-insured (personal property) manufactured housing loans (the GSEs already purchase FHA Title II land-home manufactured housing obligations); and (2) should authorize the GSEs to self-insure purchases of manufactured housing obligations with a loan-to-value (LTV) ratio in excess of 80-20%.

6. DTS should be strengthened by requiring FHFA to consider loans secured by both real and personal property in evaluating compliance with DTS, instead of the current permissive language which provides that FHFA "may" consider both types of loans.

SUMMARY

Traditional lending models for manufactured housing have included all of the loan products and programs discussed above. For several years, lenders were able to originate loans using these products and experienced good loan performance and achieved profitability. Some of these lenders are still operating today, but there is a significant under-capacity to sell these loans in the marketplace. While some manufactured housing lenders, just as mortgage lenders in the site built industry, got away from solid underwriting criteria and pushed the envelope on lending, leading to bad loan performance and the loss of lending capacity, the lending model for profitable loans exists today, but is restrained by access to the capital markets.

The industry believes that manufactured housing loans can be made profitably by using traditional lending models and methods, but currently there is little financing available.

The credit crisis has further exacerbated this issue by forcing the largest lender from the marketplace. Without consumer financing for manufactured homes, America will lose one of its greatest assets, an industry built on affordable, non-subsidized housing.

The industry currently has a number of lenders that can provide additional information related to these lending programs and models. MHARR stands ready to facilitate information for the GSEs and its regulator necessary to meet the requirements of the Duty to Serve.

Please see the attached Appendix for an Example Chattel Loan Worksheet on the next page.

APPENDIX

CHATTEL LOAN WORKSHEET
MAXIMUM HOME SALES PRICE CALCULATION

Total Factory Invoice				60,000
Deletions				
Freight			1,500	
Taxes				
Furniture				
Wheels and Axles			1,200	
Fees			300	
Other: ________________				
Total Deletions				(3,000)
Net Invoice				57,000
Advance Ratio		Select		
New-less than 1 year	145%	X		82,650
New-less than 2 years	140%			
New-less than 3 years	135%			
New-less than 4 years	130%			
Mfg VEP Code		Select		
If Code = 0, then add 5%				
If Code = 1, then no adjustment		X		-0-
If Code = 2, then deduct 5%				
Adjusted Mark-up Amount				82,650
Additions				
Freight			1,500	
Sales Tax			1,500	
Delivery and Set			2,000	
Air Conditioner			1,400	
Skirting			800	
Steps			500	
Fees			300	
Other: ________________				
Total Additions				8,000
Total Home Value				90,650
Maximum LTV (100% minus minimum conditioned down-payment				95%
Maximum Advance (Total home value X Max LTV)				86,118