



July 21, 2010

Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, N.W.  
Washington, D.C. 20552

**Attention: Comments/RIN 2590-AA27**

Dear Mr. Pollard:

The Manufactured Housing Institute (MHI), a trade association representing all segments of the factory-built housing industry including manufacturers, lenders, community owners and retailers, appreciates the opportunity to submit formal comments in response to the Federal Housing Finance Agency's (FHFA) *Enterprise Duty to Serve Underserved Markets* notice of proposed rulemaking (75 FR 32099).

#### **BACKGROUND**

There is a long history of Fannie Mae and Freddie Mac failing to serve the needs of the manufactured housing market. The possibility of establishing substantive liquidity for manufactured home loans is severely undermined by the effective monopoly the GSEs have on the secondary lending market and the lack of service provided to the manufactured housing industry.

Ultimately, this hurts consumers and those most in need of affordable housing. Congress recognized this reality, and through the Housing and Economic Recovery Act of 2008 (HERA; P.L. 110-289), specifically established a duty for the GSEs to serve underserved markets, including manufactured housing.

Less than one percent of GSE business originates from manufactured housing. While the GSEs may purchase small amounts of conforming real property manufactured housing loans, they offer virtually no funding for personal property loans. However, since 1989 manufactured housing has accounted for 21 percent of all new homes sold in this country, and in 2009 manufactured housing accounted for 43 percent of all new homes sold under \$150,000 and 23 percent of all new homes sold under \$200,000.

In requiring the GSEs dutifully serve the needs of the manufactured housing market, Congress intended "to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets." HERA provided further direction that the GSEs "shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgage on manufactured housing."

## MHI COMMENTS ON PROPOSED RULE

### Personal Property Lending

MHI is disappointed in FHFA's proposal to "consider only manufactured home loans titled as real property for the purposes of the duty to serve the manufactured housing market." HERA specifically provided FHFA the authority and direction to consider loans secured by both real and personal property in evaluating whether the GSEs are in compliance with their duty to serve obligation. Given the prevalence of personal property lending in the manufactured housing sector, FHFA's proposed rule essentially disregards the wide-scale needs of both the manufactured housing industry and consumer, as well as Congressional intent.

A manufactured home financed with a personal property home loan is among the most affordable forms of homeownership as no land is involved in the loan transaction. Today, the industry estimates that personal property home loans account for at least 60 percent of manufactured housing lending.

The proposed rule indicated that with the GSEs in government conservatorship, FHFA is restricted in its ability to approve any new product lines, including personal property lending. While GSEs do not currently purchase personal property home loans, they have in the past purchased asset-backed securities collateralized by manufactured personal property home loans and have purchased loans directly from lenders for their portfolios. The GSEs cannot serve the manufactured housing market by eliminating the 60 percent of manufactured homebuyers who finance their homes using a personal property home loan.

The industry is willing to consider all facets of a responsible lending program for personal property lending that would give the GSEs adequate protection from loss, including:

- Single-family, owner occupied, primary residence limitation
- Fully documented income
- Fully amortizing loans
- Fixed rates
- Fixed payment
- Low prepaid finance charges and fees
- Longer term leases in land-lease communities
- Minimum FICO Scores
- Maximum 90 percent loan-to-value ratio
- Self-Servicing by lenders and community owners
- Internal reserves for losses (self-insured)
- Risk sharing by lenders and community owners

In its proposed rule, FHFA indicated there are questions regarding consumer protections on personal property home loans. However, there are various laws and standards, both at the federal and at the state level, that protect consumers receiving a personal property home loan for a manufactured home.

For instance, HERA included amendments to the Truth in Lending Act (TILA), known as the Mortgage Disclosure Improvement Act of 2008 (MDIA). Regulation Z, which implemented TILA, was also amended to implement MDIA.

In general, TILA requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). To better protect consumers, MDIA broadened these guidelines by requiring lenders make certain disclosures to consumers about the terms of their loans. All loans subject to the Real Estate Settlement Procedures Act (RESPA) must include TILA disclosures. The manufactured housing industry applies the provisions of TILA to all loans where real property is involved as well as to personal property home loans. A number of MDIA requirements that now impact personal property home loans for manufactured homes include:

- TILA disclosures must be given to the customer (by delivery or placing in the mail) no later than three business days after the lender receives the consumer's application for a loan;
- Closing cannot take place until, or after, the seventh business day after the delivery/ mailing of the TILA disclosure;
- If the APR provided in the TILA disclosure changes beyond a specified tolerance for accuracy, the lender must provide a corrected disclosure, which the consumer must receive on, or before, the third business day before closing;
- No fees, except for a bona fide credit report fee, can be collected by the lender before the consumer receives the TILA disclosure.

Other MDIA requirements affecting manufactured housing personal property home loans include: the creation of a category of higher-priced mortgage loans; lenders must now specifically determine a consumer's ability to pay and are no longer able to make loans on stated income; and, lenders must verify a customer's ability to pay based on the customer's income.

Additional federal consumer protections include the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), also enacted as a part of HERA. The SAFE Act is designed to enhance consumer protection and reduce fraud by requiring states to establish minimum standards for the licensing and registration of mortgage loan originators, including originators of personal property home loans.

The SAFE Act's primary objectives include the creation of a comprehensive licensing and supervisory system with uniform application and reporting requirements. All states are required to implement legislation that meets the minimum requirements of the SAFE Act. To date, most states have enacted legislation implementing the SAFE Act. The SAFE Act also directs the establishment of a nationwide mortgage licensing system and registry. Manufactured housing lenders are required to have their loan originators licensed and registered in accordance with the SAFE Act.

The industry is willing to engage FHFA in addressing its concerns with respect to personal property lending. Ultimately, MHI believes FHFA must reconsider its approach to personal property lending and approve this type of lending activity by the GSEs.

#### *Manufactured Housing Community Lending*

Unless a GSE has been engaged in the commercial lending market for manufactured home communities prior to the implementation of government conservatorship, FHFA's proposed rule precludes the GSEs from developing new activity in this arena. MHI strongly believes the GSEs should be directed to purchase commercial manufactured housing community loans under their multifamily goals.

The recent slowdown in commercial lending has made it extremely difficult for owners of land-lease communities to refinance their properties. The ownership of a manufactured home sited in a land-lease community is one of the most affordable forms of home ownership.

In 2008, Fannie Mae's multifamily loan volume through its Delegated Underwriting and Servicing (DUS) program was approximately \$33 billion. However, only \$1 billion of that total volume was in manufactured home communities. Historically, manufactured housing community loans have performed well and land-lease communities offer one of the most affordable forms of homeownership for moderate-, low-, and very low-income households. GSE activity in this area is vital to maintaining the health of this sector and to ensuring the availability of this important supply of affordable housing.

Additionally, we understand that the proposed rule now precludes Freddie Mac, who was actively engaged in preparing to enter the market by the 3<sup>rd</sup> quarter, has now curtailed these efforts. Fannie Mae has demonstrated for years they have been able to operate in this space, why should Freddie Mac not also be allowed to compete for this business, and bring this very important capital source to the market? This policy must be reconsidered.

#### Land-Home and Real Estate Manufactured Housing Mortgages

The GSEs have existing mortgage loan programs that provide for financing of manufactured homes. While Fannie Mae's *MH Select* program provides for a 97 percent LTV, no loans have been originated due to the program's highly restrictive nature.

These programs are very limited primarily due to the unavailability of private mortgage insurance (PMI) for manufactured housing. Private mortgage insurance companies routinely deny coverage for manufactured housing loans, or in a limited number of cases, coverage may be available on an 85 percent LTV loan where the costs of PMI are higher than for site built housing.

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

FHFA is urged to approve some form of self-insurance mechanism for the GSEs, similar to the Federal Housing Administration (FHA) insurance program, which eliminates the dependence on a private insurance industry that is not currently positioned to provide sufficient loan level loss protection.

For many years, manufactured housing industry lenders self-insured against credit loss and can provide valuable assistance in developing the levels of reserves needed to cover losses. This mechanism can also allow FHFA and the GSEs to address non-conforming loans in rural areas where appraisals and comparables are not readily available. We believe that a graduated premium, dependent on the LTV and the credit evaluation, is a model the industry can embrace.

Another underwriting issue relates to appraisals. Manufactured home appraisals occur in two situations: 1) a new home purchase that includes both the cost of the home and all typical installation and set up items; and 2) an existing home purchase where the home is already sited and ready for occupancy.

The unique nature of the manufactured housing land-home transaction has resulted in the need for flexibility in appraisal methods. The typical manufactured housing land-home appraisal requires both a market analysis and a cost analysis. The majority of land-home appraisals for manufactured housing occur in rural areas where little or no comparable sales data exists, thereby limiting the effectiveness of the sales comparison approach. There needs to be latitude for appraisers to determine whether or not the sales comparison approach, the cost approach, or a blend of the two is the best measurement of value depending on the information that is available.

Underwriting guidelines for land-home transactions should also maintain personal property characteristics for titling purposes. We believe that maximum flexibility should be provided to the GSEs in permitting lenders to select the lien perfection approach that provides the most effective means of default resolution.

Three broad categories of lien perfection for manufactured housing exist.

- **Home only loan transactions:** occurs when a security interest is recorded on the title of the home and the home remains personal property and not affixed to the real estate
- **Traditional mortgage transaction:** where the lien recordation and perfection is on the real estate and all improvements including the home; the lender follows the normal foreclosure procedures identical to those of site built homes
- **A hybrid of the two:** the lender files a lien on the home only and records a lien against the real property as well; this allows the lender the option of separating the home from the real estate for both a quicker resolution towards default resolution and quite possibly a lower loss severity; this option provides lenders with maximum flexibility in protecting their secured interests

\* \* \* \* \*

MHI recognizes the GSEs are in a weakened state and hesitant to make changes to their existing business models. However, Congress, through HERA, recognized a fundamental lack of service existed and specifically directed the GSEs to begin to dutifully serve the entire needs of the manufactured housing market.

The manufactured housing industry can appreciate the difficulty and uncertainty of operating in a stressed environment. New manufactured home construction has fallen 86 percent over the past ten years, which has accounted for 167 plant closures, more than 7,500 home center closures, and over 200,000 lost jobs. Most importantly, thousands of our customers have been unable to buy, sell, or refinance their homes.

While we appreciate the concerns raised by FHFA to ensure the GSEs remain viable economic institutions and that adequate consumer protections are in place, FHFA and the GSEs have an obligation to serve manufactured housing and the 18 million Americans that currently reside in manufactured homes.

The proposal to potentially eliminate personal property lending from the GSE duty to serve requirements not only fails to serve the underserved manufactured housing market; it fails to serve the larger underserved affordable housing and rural housing markets.

MHI looks forward to working with FHFA in the weeks ahead on these issues. If you need further information regarding any area discussed in this comment letter, please contact me at (703) 558-0678 or [tlong@mfghome.org](mailto:tlong@mfghome.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Thayer Long". The signature is fluid and cursive, with the first name "Thayer" and the last name "Long" clearly distinguishable.

Thayer Long  
Executive Vice President  
Manufactured Housing Institute