

Alfred M. Pollard, General Counsel
Attn: Comments/RIN 2590-AA27
Federal Housing Finance Agency
1700 G. Street, N.W., 4th floor
Washington , D.C. 20552

Dear Mr. Pollard:

We are writing with respect to the proposed rule that would implement the duty of Fannie Mae and Freddie Mac under Section 1129 of the Housing and Economic Recovery Act of 2008 to serve the manufactured housing market. The proposed rule would limit this duty to manufactured homes titled as real property and to loans that do not include a mandatory arbitration provision.

Because of these limitations, the proposed rule will likely provide virtually no benefit to the manufactured home market in Ohio. Under Ohio's relevant statutes and industry practice, which are discussed below, nearly all manufactured homes and mobile homes are titled as personal property at the point of sale and are subject to loans with a mandatory arbitration provision. For this reason, we request that the Federal Housing Finance Agency (FHFA) remove these limitations in its adoption of a final rule.

Background of Commenter Jim Buchanan

For the past 25 years, Mr. Buchanan has been a legal services attorney specializing in housing matters, especially manufactured housing. Additionally, he worked with manufactured/mobile home issues for 15 years prior to becoming an attorney. As an attorney, he has litigated scores of manufactured home cases and resolved numerous others prior to litigation. He is also the author of Ohio Manufactured/Mobile Home Law, in all three of its editions since 1995 and the manufactured home portion of Ohio Consumer Law which is issued annually.

The other signatories are attorneys representing other Legal Services programs in Ohio, who collectively, have a long history of advocacy on behalf of low income consumers, including manufactured home owners and residents in both urban and rural areas.

Ohio Manufactured Home Ownership Law

In Ohio, homes are classified as either manufactured or mobile homes. Under Ohio Revised Code 3781.06(C)(4), manufactured homes are those that meet the

HUD Construction and Safety Standards and have the data plate, or certification, attached to them. Mobile homes are defined in O.R.C. 4501.01(O) as homes that do not meet the requirements of the definition of manufactured homes. Since the proposed Rule uses the definition of manufactured homes found in the Construction and Safety Standards Act, this would automatically exclude Ohio mobile homes from the discussion.

We believe that the proposed Rule should include both manufactured and mobile homes. Both are characterized as chattel at the point of original sale. Both are financed in a similar manner. Both provide homeownership opportunities. Ultimately, most purchasers do not know the difference between the two definitions in Ohio and use the words interchangeably. To better serve the manufactured home market, one must also serve the mobile home market.

As stated above, in Ohio, all manufactured homes are initially sold as motor vehicles, licensed by the Ohio Department of Motor Vehicles. Although the licensing was transferred to the Ohio Manufactured Homes Commission as of July 1st, the licensing procedure remains the same. Ohio does provide for subsequent conversion to real property for manufactured or mobile homes in certain circumstances but the great majority of these homes will always remain as personal property.

Because these homes are sold as personal property, or chattel, they are the subject of commercial paperwork under the Uniform Commercial Code rather than mortgages. By definition, every manufactured home is a good sold as personal property at the time of its original sale. Subsequent sales are, for the most part, of personal property due to the restrictions listed below.

Ohio Revised Code 4503.06 details the requirements for a manufactured home to be classified as real property. It must be located on land owned by the homeowner, attached to a permanent foundation, and connected to appropriate utilities. It must also be at least 22 feet wide and have a minimum of 900 square feet. This definition eliminates older homes as well as singlewides from being classified as real property.

Most manufactured and mobile homes are located in manufactured home parks because of zoning restrictions which prevent placement on privately-owned land. An attempt to allow such homes in all single-family areas was overturned by the Ohio Supreme Court in City of Canton v. State of Ohio (2002), 95 Ohio St. 3d 149. As a result of restricting manufactured home placement in all metropolitan and most urban areas, a large percentage of these homes can never be classified as real property.

Since most manufactured homes will never lose their identity as chattel, they can never be the subject of a mortgage. In a few cases, where the home is transferred to the real property tax duplicate through the procedures in state law, one may refinance by obtaining a mortgage, but there is no other way of changing the nature of the retail installment paperwork for most homes.

In relation to the last point in the proposed Rule, Part 1281, Section 1282.32(b)(1), mandatory arbitration is a remedy favored by Ohio courts since the United States Supreme Court decision in Green Tree Financial Corp. v. Randolph, (2000), 531 U.S. 79 and the Ohio Supreme Court in Williams v. Aetna Finance Co., (1998), 83 Ohio St. 3d 464. Almost all manufactured home commercial paper in Ohio now includes arbitration agreements.

The Duty to Serve Cannot Be Met in Ohio

The proposed Rule would consider only manufactured homes titled as real property for purposes of meeting the duty to serve underserved markets. Such a limitation necessarily makes it impossible to serve the manufactured home market in Ohio. Although this Rule concerns a duty to facilitate the secondary sales market, very few homes will be eligible to enter that market as a result of the restrictions proposed by the FHFA.

The discussion of the proposed Rule in the Federal Register of June 7, 2010, outlines well the problems with manufactured home loans, including higher financing rates, shorter maturities, and fewer consumer protections than with conventional mortgages. It also outlines the facts regarding populations in rural areas having lower incomes, the challenges of arranging standard mortgage financing, the lack of affordable housing options and the higher defaults on chattel loans. In doing so, it then proceeds to protect the federal agencies by eliminating almost all manufactured homes from possible secondary market financing by the government and, in fact, directs the owners of such homes to seek nontraditional financing with the very problems that are listed. We are baffled by such a proposal being offered when the ostensible purpose of the proposed rule is to facilitate homeownership in underserved areas.

Finally, the presence of arbitration provisions in commercial paper used in Ohio manufactured home sales would negate any chance of including these homes in the duty to serve. The proposed Rule would not be applicable to homes sold with commercial paper that includes arbitration provisions, yet almost all such sales have these provisions in Ohio. Although we agree that such mandatory arbitration provisions are harmful to consumers, until such time as there is a change in federal law and policy to protect consumers from mandatory arbitration in consumer contracts, as well as from other industry practices that restrict consumer rights,

Ohio consumers have little leverage to negotiate contracts that would meet the criteria set forth in the proposed rule.¹

We agree that consumer loans to purchase manufactured homes should require consumer protections, such as those suggested by the National Consumer Law Center (banning prepayment penalties, banning yield spread premiums, etc.), but also believe that such requirements are beyond the duty to serve for FHFA, and that such requirements are unlikely to be instituted in the near future. Consequently, we believe it is better for the FHFA to include such consumer loans in their currently imperfect form as part of the duty to serve, rather than simply excluding them altogether.

Conclusion

The Rules as proposed would afford virtually no benefit to Ohio manufactured home purchasers or owners. Although the FHFA states that it desires to meet the duty to serve the manufactured home market, it cannot do so with the restrictions in the proposed rule. Mobile homes are not included in the proposal, only manufactured homes. In Ohio, very few manufactured homes are classified as real property, which would eliminate almost all such homes from coverage under the rule. Virtually all commercial paper for manufactured homes includes arbitration provisions, another factor that would negate their coverage under the rule. In the end, the duty to serve would be meaningless in Ohio because the rule would prevent coverage of almost all manufactured homes in the state.

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¹ It is noteworthy that both the Supreme Courts of Ohio and the United States have opined that arbitration is a preferred method of dispute resolution.

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