**Comments Submitted on Behalf of the**
**The Bay Federal Credit Union**

Regarding
Notice of Proposed Rulemaking
Enterprise Duty to Serve Underserved Markets

Federal Housing Finance Agency
12 CFR Part 1282
**RIN 2590-AA27**

July 22, 2010

## I. Introduction.

The Bay Federal Credit Union (Bay Federal) submits these comments, on behalf of itself and its 56,000 members in response to the Federal Housing Finance Agency's (FHFA) Notice of Proposed Rulemaking regarding the Duty to Serve Underserved Markets.

The Bay Federal Community Credit Union is a not for profit financial institution with a commitment to providing financing in the moderate and low income housing market. In that regard, Bay Federal is largest provider of manufacture home purchase loans in the Monterey Bay - area of California, currently funding over $115,000,000 of them

Bay Federal commends the FHFA for recognizing the crucial importance of manufactured housing in providing housing opportunities for low and moderate income Americans. The government sponsored entities, Fannie Mae and Freddie Mac (GSEs), play an important and influential role in the secondary market and they could help improve the financing opportunities of thousands of very low, low, and moderate-income families buying manufactured homes. Bay Federal applauds the FHFA for their well thought out and careful analysis of the manufactured home lending market, particularly of the risks associated with purchasing chattel manufactured home loans balanced against the need to improve the lending environment for low and moderate income home purchasers whose only opportunity of home ownership is very often through the purchase of a manufactured home. This is a scenario that most of our low and moderate income members face in our high-cost housing market area of Central California.

However, the proposed rules addressing the GSEs' duty to serve (DTS) the low and moderate income market for manufactured housing can be improved and significantly expanded without adding any substantial new risks to the GSEs, as we explain below.

## II. The GSEs Should Receive DTS Credit for Providing Assistance in the Financing of Chattel Loans in All Resident Owned Communities.

Bay Federal believes that thy FHFA's proposal that DTS credit should be given to GSEs only for loans to manufactured homes titled as real property is too limited, particularly for manufactured housing in California. Bay Federal agrees with the FHFA's conclusion that chattel loans on manufactured homes in investor-owned communities pose significant risks that are difficult to address. However, it has been our experience in making many of these loans that, with the right protections, chattel loans on manufactured homes in resident owned communities (ROCs) do not pose this same risk, regardless of the manufactured homes not being titled as real property. Accordingly, we believe that, with the right protections, DTS credit should be given for chattel loans on manufactured homes in ROCs regardless of whether or not those manufactured homes are titled as real property. This would greatly expand the housing opportunities for underserved low and moderate income populations without posing a significant risk to the GSEs.

In ROCs, the manufactured home owners have formed a nonprofit corporation and purchased their community's land together through that corporation. The corporation holds one mortgage on the land on behalf of its manufactured home owner members. In California, there are various forms of ownership that follow this basic model with slight variations. Typically, the homeowners purchase inexpensive membership shares in their corporation, which are affordable for outright purchase by many low and moderate income households or can be financed with very low and affordable monthly payments. The remainder of the purchase price for the community's land is paid for by a land mortgage obtained by their nonprofit corporation. Their corporation then charges lot fees, or rents, to its manufactured home owner - members to pay off the land mortgage, to repair and maintain the community's infrastructure, to pay for the management of the community and to pay property taxes on the land. The homeowners control their non-profit corporation through the election of their nonprofit corporate board and, through it, they make the community's decisions regarding the amount of the lot fees, management, infrastructure maintenance and community rules.

In California, only a small number of these ROCs have been subdivided that then results in their manufactured homes being able to be titled as real property. However, the fact that the communities in the non-subdivded ROCs are owned and controlled by their mobilehome owner - members eliminates the risks posed by manufactured home chattel loans in investor owned communities and puts them on the same footing as loans on manufactured homes titled as real property. In that regard, it has been our experience that, with the right protections that enable us to protect our security interests in our loans, manufactured homes in ROCs have presented us with significant opportunities to provide very low risk chattel mobilehome loans to the low and moderate income population of the area of California that we serve. Allowing DTS credits on this type of loan would allow us to greatly expand our lending to this population.

**III. The Protections That Are Needed to Extend DTS Credits for Providing Assistance in the Financing of Chattel Manufactured Home Loans in Resident Owned Communities**.

In our experience, there are two areas of significant risks in ROCs in California that have to be covered in order for the GSEs to be able to safely provide assistance in the financing of chattel loans in those ROCs.

First, either through state law or an individual ROC's governing Covenants Conditions and Restrictions (CCRs), there must be a process through which a lender can sell a manufactured home on site in the event of a default and repossession including:

**1.** A requirement that notice be given to the lender when a ROC intends to evict one of its members and the opportunity for the lender to then repossess the manufactured home, on that basis, and sell it on site after foreclosing on it, including transfer of the membership share.

**2.** A requirement that a lender, in the event of a default on the chattel loan, be permitted to repossess and sell the manufactured home on site, including transfer of the membership share.

A problem that we have been facing in California is that, due to a legislative oversight that has not yet been corrected, we have these protections with regard to chattel manufacture home loans in investor-owned communities but not with ROCs, regardless of whether or not the ROCs' manufactured homes are titled as real property or not. This has limited us to only being able to make either chattel loans or loans on manufactured homes that are titled as real property in ROCs when the individual ROC's CCRs individually provide us with these protections. Extending DTS credits to chattel loans in ROCs that provide these protections, either through state law or through an individual ROC's CCRs, would both allow us, and other lenders, to expand our loan services in those ROCs and also provide the impetus to the California Legislature, as well as to the legislatures of other states with similar laws, to correct this legislative oversight and to incorporate these protections into state law.

Second, due to another flaw in California's laws that regulate the conversion of investor owned rental manufactured home communities to subdivided ROCs, the owners of investor-owned communities in California have been able to convert their rental communities to subdivided ROCs under terms that are as strongly opposed by the homeowners in those communities and that then often result in those low and moderate income owners losing the investments that they have made in their manufactured homes and in their evictions from their manufactured home community. To protect against this problem, DTS credits should only be granted for any type of loan in a ROC when there is evidence that the conversion of the manufactured home community from an investor own rental community to a ROC is supported by a majority of the homeowners in that community through either a vote of those homeowners or a survey of their support.

**IV. Conclusion**

Bay Federal strongly endorses the FHFA's efforts to expand the availability of financing in the low and moderate income manufactured housing market through the regulations that you are proposing. For the reasons that are described above, Bay Federal believes that your proposed regulations could significantly expand the availability of this financing much further if they are slightly modified to allow for DTS credits for GSEs providing assistance in financing chattel manufactured homes in ROCs when the protections that we have described above are also provided. This will enable us and other financial institutions to greatly expand the availability of these loans to low and moderate income households while posing no significant increase in risks to ourselves or to the GSEs.

Respectfully submitted,

William J. Constantine

William J. Constantine, for
the Bay Federal Credit Union

Contact information:

William J. Constantine
Law Office of William J. Constantine
303 Potrero Street, Building # 29, Suite 104
Santa Cruz, California 95060
WConst1238@aol.com
(831) 420-1238
Fax: (831) 480-5934